

the private sector, result from this action.

*D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

*E. 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 February 23, 1998. 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.

**Note:** Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 27, 1997.

**Felicia Marcus,**

*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)(239)(i)(A)(2) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

- (c) \* \* \*
- (239) \* \* \*
- (i) \* \* \*
- (A) \* \* \*

(2) Rule 1115, adopted on March 2, 1992 and amended on April 22, 1996.

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[Region II Docket No. NY10-2-174; FRL-5934-7]

**Approval and Promulgation of Implementation Plans; Revisions to the New York State Implementation Plan for Ozone**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency is approving a revision to the New York State Implementation Plan (SIP) related to the control of volatile organic compounds. The SIP revision consists of amendments to Part 200, "General Provisions," Part 201, "Permits and Certificates," Part 228, "Surface Coating Processes," Part 229, "Petroleum and Volatile Organic Liquid Storage," Part 233, "Pharmaceutical and Cosmetic Manufacturing Processes," and Part 234, "Graphic Arts." The amendments extend reasonably available control technology rules to enlarged nonattainment areas and to all of New York State which is part of the Northeast Ozone Transport Region as required by the Clean Air Act. In addition, the amendments to Part 228 correct deficiencies in New York's existing SIP, as required by the Clean Air Act.

**EFFECTIVE DATE:** This rule is effective January 22, 1998.

**ADDRESSES:** Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II 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, 50 Wolf Road, Albany, New York 12233.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637-4249.

**SUPPLEMENTARY INFORMATION:** On May 24, 1995, the Environmental Protection Agency (EPA) published in the **Federal Register** (60 FR 27464) a Notice of Proposed Rulemaking (NPR) concerning a revision to the New York State Implementation Plan (SIP) for ozone. The State requested the SIP be revised to incorporate revised regulations contained in Title 6 of the New York Code of Rules and Regulations (NYCRR) Part 200, "General Provisions," Part 201 "Permits and Certificates," Part 228, "Surface Coating Processes," Part 229 "Petroleum and Volatile Organic Liquid Storage and Transfer," Part 233, "Pharmaceutical and Cosmetic Manufacturing Processes," and Part 234, "Graphic Arts." These regulations were adopted on February 26, 1993, and became effective on April 4, 1993.

**Final Action**

The revisions and the rationale for EPA's action were explained in EPA's May 24, 1995 NPR and will not be restated here since EPA's final action does not differ from that proposed in the NPR. No comments were received on EPA's proposed action. EPA is approving Parts 200, 201, 228, 229, 233 and 234 because they are consistent with EPA policy and guidance and also meet the requirements of sections 110, 182(a)(2)(A), 182(b)(2) and 184(b) of the Clean Air Act.

It should be noted that sections 228.3(e), 229.3(g) and (h), 233.3(h), and 234.3(f) permit the Commissioner of the New York State Department of Environmental Conservation (NYSDEC) to accept a lesser degree of control (alternative requirements) upon submission of satisfactory technical and/or economic evidence that the source has applied reasonably available control technology. These provisions also require that any lesser degree of control must be submitted to the EPA as a revision to the SIP. EPA views these provisions as giving the Commissioner the authority to permit alternative requirements once they have been submitted and approved by EPA as SIP revisions. EPA will not recognize any variance or alternate requirement as being federally enforceable until it is submitted to EPA by the State and is approved by EPA as a source specific SIP revision.

Sections 229.4(a)(4), 233.4(b)(4) and 234.4(b)(1)(iv) permits the Commissioner and EPA to accept

alternative analytical methods for determining compliance with emission limits, contained in these Parts, when approved test methods are not applicable. These provisions require that any alternate test method must be approved in advance by the NYSDEC and EPA before they can be used.

Section 228.5(c) permits the Commissioner to accept alternative analytical methods for determining compliance with emission limits, contained in part 228, when approved test methods are not applicable. In such a case, EPA reserves its right to demonstrate the applicability of Test Method 24 (40 CFR part 60, appendix A).

It should be noted that Part 201 contains the requirements for the State's permit to construct and certificate to operate program. These provisions are not intended to meet the Title V Permits Program required by the Clean Air Act. New York has made a subsequent submittal to EPA which addresses the Title V Permits Program. Also, Part 201 contains a previously adopted odor provision which EPA will act on in a separate rulemaking.

#### SIP Deficiencies

The revisions to Parts 200 and 228 addressed several deficiencies which EPA identified in a May 26, 1988 letter to former Governor Cuomo and a January 30, 1991 letter to the NYSDEC Commissioner which found the SIP substantially inadequate to attain the ozone and carbon monoxide standards. With EPA's approval of these regulations, EPA is making a finding that New York has now corrected all but one deficiency which involves the test methods for determining capture efficiency for VOC emission control systems.

EPA originally provided guidance on such test methods, but states and industry inquired whether less costly and less time consuming alternatives were possible. EPA began a study of capture efficiency test methods and issued a moratorium on the need to correct any deficient regulations until the study was complete. On February 7, 1995, EPA announced the completion of this study, "Guidelines For Determining Capture Efficiency," and required any states with this deficiency to correct their VOC regulations. On March 20, 1995, EPA notified New York that such corrections were now required. Because the regulations which are the subject of this **Federal Register** notice were proposed and adopted prior to March 20, 1995, EPA is approving the regulations which are the subject of this rulemaking. However, submission and

approval of the capture efficiency test methods is still necessary for full approval of New York's SIP. New York is in the process of developing the necessary revisions to address capture efficiency test methods. The next time the State submits a SIP revision containing these regulations, EPA will require that they contain these test methods.

As of February 27, 1995, EPA's moratorium on the use of such methods ended and the methods in the February 27, 1995 guidance document are considered by EPA to be accurate and credible. Should a situation arise which involves capture efficiency, EPA will require confirmation of capture efficiency values using the appropriate test method.

#### Conclusion

EPA is approving Parts 200, 201, 228, 229, 233 and 234 as part of the SIP. Sections 228.3(e)(1), 229.3(g)(1), 233.3(h)(1), and 234.3(f)(1) allow for alternative requirements provided they are submitted to the EPA for approval as a source specific SIP revision. EPA will not recognize any variance or alternate requirement as being federally enforceable until it is submitted to EPA by the State and is approved by EPA as a source specific SIP revision. Alternate analytical methods for determining compliance with surface coating emission limits pursuant to Section 228.5(c) are approved based on NYSDEC's agreement that, for purposes of being federally enforceable, New York will submit these alternate test methods to EPA for approval.

Nothing in this rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

#### Administrative Requirements

##### *Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

##### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small

businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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 impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, 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).

#### *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.

#### *Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**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 February 23, 1998. 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: November 26, 1997.

**Jeanne M. Fox,**

*Regional Administrator, Region II.*

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)(93) to read as follows:

**§ 52.1670 Identification of plan.**

\* \* \* \* \*  
 (c) \* \* \*  
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(93) Revisions to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds from petroleum and volatile organic compound storage and transfer, surface coating and graphic arts sources, dated March 8, 1993 submitted by the New York State Department of Environmental Conservation (NYSDEC).

(i) Incorporation by reference:

(A) Amendments to Title 6 of the New York Code of Rules and Regulations (NYCRR) Part 200 "General Provisions," Part 201 "Permits and Certificates," Part 228 "Surface Coating Processes," and Part 229 "Petroleum and Volatile Organic Liquid Storage and Transfer," Part 233 "Pharmaceutical and Cosmetic Manufacturing Processes," and Part 234 "Graphic Arts," effective April 4, 1993.

3. Section 52.1679 is amended by revising the six entries for Parts 200, 201, 228, 229, 233 and 234 to the table 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
Part 200, General Provisions.	4/4/93	December 23, 1997, FR 67006.	Redesignation of nonattainment areas to attainment areas (200.1(mm)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC.
Part 201, Permits and Certificates.	4/4/93	December 23, 1997, FR 67006.	
Part 228, Surface Coating Processes: 228.1–228.10 .....	4/4/93	December 23, 1997, FR 67006.	SIP revisions submitted in accordance with Section 228.3(e)(1) are effective only if approved by EPA.
Part 229, Petroleum and Volatile Organic Liquid Storage and Transfer.	4/4/93	December 23, 1997, FR 67006.	SIP revisions submitted in accordance with Section 229.3(g)(1) are effective only if approved by EPA.
Part 233, Pharmaceutical and Cosmetic Processes.	4/4/93	December 23, 1997, FR 67006.	SIP revisions submitted in accordance with Section 223.3(h)(1) are effective only if approved by EPA.
Part 234, Graphic Arts ....	4/4/93	December 23, 1997, FR 67006.	SIP revisions submitted in accordance with Section 234.3(f)(1) are effective only if approved by EPA.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CO–44–1–6866(a); FRL–5630–1]

**Clean Air Act Approval and Promulgation of State Implementation Plan for Colorado; Carbon Monoxide Contingency Measures for Colorado Springs and Fort Collins**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA approves the State implementation plan (SIP) revisions submitted by the State of Colorado with a letter dated February 18, 1994. This submittal addresses the Federal Clean Air Act requirement to submit contingency measures for carbon monoxide (CO) for the Colorado Springs and Fort Collins areas designated as nonattainment for the CO National Ambient Air Quality Standards (NAAQS). The rationale for the approval is set forth in this document; additional information is available at the address indicated below.