

## EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 1599 .....	Definitions .....	1/8/10	5/28/10 [Insert page number where the document begins].	New Regulation.
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[FR Doc. 2010-12929 Filed 5-27-10; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R02-OAR-2010-0131, FRL-9146-4]

**Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The EPA is approving 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:** *Effective Date:* This rule will be effective *June 28, 2010*.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2010-0131. All documents in the docket are listed on the <http://www.regulations.gov> Web site. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007-1866. This Docket

Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212-637-4249.

**FOR FURTHER INFORMATION CONTACT:** Kirk J. Wieber ([wieber.kirk@epa.gov](mailto: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 the history and time frame for State Implementation Plan (SIP) submissions?
- II. What was included in New York’s submittals?
- III. What comments did EPA receive in response to its proposal?
- IV. What is EPA’s conclusion?
- V. Statutory and Executive Order Reviews

**I. What is the history and time frame for State Implementation Plan (SIP) submissions?**

EPA’s Phase 1 8-hour ozone implementation rule, published on April 30, 2004 (69 FR 23951), referred to as the Phase 1 Rule, specifies that states must submit attainment demonstrations to EPA by no later than three years from the effective date of designation, that is, submit them by June 15, 2007.

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

**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 a State effective date of October 15, 2009 and 6 NYCRR Part 239, “Portable Fuel Container Spillage Control” with a State 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 New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area which is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester and Rockland. These revisions will also address, in part, the RACT and RACM requirements by providing VOC emission reductions statewide.

**III. What comments did EPA receive in response to its proposal?**

On March 2, 2010 (75 FR 9373), EPA proposed to approve the proposed revisions to the New York SIP for ozone concerning the amendments to 6 NYCRR Parts 235 and 239. The reader is referred to that proposal for a more detailed discussion of this action. No comments were received in response to that proposal.

**IV. What is EPA’s conclusion?**

EPA has evaluated New York’s submittal for consistency with the Clean Air 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 Clean Air 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, even though approved by the State, 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.

Therefore, EPA is approving the proposed revisions to Part 239, “Portable Fuel Container Spillage Control” with a State effective date of July 30, 2009, 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. EPA is also approving the proposed revisions to Part 235, “Consumer Products” with a State effective date of October 15, 2009, as part of the New York SIP.

#### V. Statutory and Executive Order Reviews

Under the Clean Air 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 Clean Air Act. 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 (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 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 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 July 27, 2010. 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 27, 2010.

**Judith A. Enck,**

*Regional Administrator, Region 2.*

■ 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)(114) to read as follows:

#### § 52.1670 Identification of plans.

\* \* \* \* \*

(c) \* \* \*

(114) 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 concerning control strategies which will result in volatile organic compound emission reductions that will help achieve attainment of the national ambient air quality standards for ozone.

(i) Incorporation by reference:

(A) Title 6 of the New York Code of Rules and Regulations, Part 235, “Consumer Products,” with an effective date of October 15, 2009 and Part 239, “Portable Fuel Container Spillage Control,” with an effective date of July 30, 2009.

(ii) Additional information:

(A) Letters dated October 21, 2009 and November 23, 2009 from Assistant Commissioner J. Jared Snyder, NYSDEC, to George Pavlou, Acting Regional

Administrator, EPA Region 2, submitting the SIP revision for parts 235 and 239 respectively.

■ 3. In § 52.1679, the table is amended by revising the entries for Title 6, Part 235 and Part 239 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 235, Consumer Products ..	10/15/09	5/28/10 [Insert FR page citation].	
Part 239, Portable Fuel Container Spillage Control.	7/30/09	5/28/10 [insert FR page citation].	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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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 131**

[EPA-HQ-OW-2007-93; FRL-9156-5]

RIN NA2040

**Withdrawal of Federal Antidegradation Policy for all Waters of the United States Within the Commonwealth of Pennsylvania**

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

**ACTION:** Final Rule.

**SUMMARY:** EPA is taking final action on a 2008 proposal to withdraw the Federal antidegradation policy for all waters of the United States within the Commonwealth of Pennsylvania. We are withdrawing the Federal antidegradation policy to allow Pennsylvania to implement its own antidegradation policy. Pennsylvania has adequately demonstrated that its antidegradation policy protects all waters of the United States at a level consistent with the Federal requirements under the Clean Water Act. Therefore, the Federal antidegradation policy is redundant.

**DATES:** This final rule is effective on June 28, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OW-2007-93. All documents in the docket are listed on the <http://www.regulations.gov> Web site. 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, is not placed on

the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the OW Docket Center. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-2426, and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

**FOR FURTHER INFORMATION CONTACT:**

Janita Aguirre at EPA Headquarters, Office of Water (4305T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 (telephone: 202-566-1149, fax: 202-566-0409 or e-mail: [aguirre.janita@epa.gov](mailto:aguirre.janita@epa.gov)) or Denise Hakowski at EPA Region 3 (3WP30), 1650 Arch Street, Philadelphia, Pennsylvania 19103 (telephone: 215-814-5726, fax: 215-814-2318 or e-mail: [hakowski.denise@epa.gov](mailto:hakowski.denise@epa.gov)).

**SUPPLEMENTARY INFORMATION:**

**I. Potentially Affected Entities**

Citizens concerned with water quality in Pennsylvania may be interested in this rulemaking. Entities discharging pollutants to the surface waters of Pennsylvania could be indirectly affected by this rulemaking since water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Because this action withdraws a redundant Federal antidegradation policy, the effect of this rulemaking should be insignificant. Categories and entities which may ultimately be affected include:

Category .....	Examples of potentially affected entities.
Industry .....	Industries discharging pollutants to surface waters in Pennsylvania.
Municipalities ....	Publicly-owned treatment works discharging pollutants to surface waters in Pennsylvania.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES-regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action.

**II. Background**

Section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA or Act) directs States, with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under section 303, States are required to develop water quality standards for their navigable waters, and Section 303(c) and EPA's implementing regulations at 40 CFR part 131 require State and Tribal water quality standards to include the designated use or uses to be made of the waters, water quality criteria sufficient to protect those uses, and an antidegradation policy. Under the CWA and EPA's regulations, States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. The results of this triennial review must be submitted to EPA, and EPA must approve or disapprove any new or revised standards. Section 303(c) of the CWA authorizes the EPA Administrator to promulgate water quality standards to supersede State standards that EPA has disapproved or in any case where the Administrator determines that a new or