was granted by another state or California air management district with equivalent provisions. The variance or exemption can become effective in New Jersey for the period of time that the approved variance or exemption remains in effect, provided that all the architectural coatings within the variance or exemption are regulated by subchapter 23.

Paragraph 23.4(c) of subchapter 23 provides for alternate test methods for architectural coatings provided that the alternate method is demonstrated to provide results that are acceptable for purposes of determining compliance and that the alternate test method is first approved by both the NJDEP and the EPA.

VI. What Is EPA's Conclusion?

EPA has evaluated New Jersey's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA has determined that the revisions made to subchapter 23 ''Prevention of Air Pollution From Architectural Coatings'' of title 7, chapter 27 of the New Jersey Administrative Codes, meet the SIP revision requirements of the Act with the following exception. While the provisions related to exemptions and variances pursuant to subchapter 23, ''Architectural Coatings'' are acceptable, each specific application of those provisions will only be recognized as meeting Federal requirements after it is approved by EPA as a SIP revision. Therefore, EAP is proposing to approve the regulation as part of the New Jersey SIP with the exception that any specific application of provisions associated with variances or exemptions, must be submitted as SIP revisions.

Since submittal of this SIP revision, an issue arose concerning the quantity of emission reductions that would result from adopting an architectural coatings regulation, such as New Jersey's subchapter 23, that was more stringent than EPA's National AIM rule. Incorporating a regulation into a SIP that is more stringent, such as this one, strengthens the SIP and will result in further decreases in VOC emissions which will beneficially impact the ambient ozone concentrations. The exact amount of reductions attributed to implementation of the rule depends on what overall percent reduction is achieved and the quantity of coatings that meet these new standards.

EPA recognizes the need to resolve conclusively how to determine the amount of VOC emission reductions achieved from the implementation of AIM coatings rules in a given ozone nonattainment area. This remains an issue of concern to the states, the regulated sector, and other interested parties. Therefore, EPA will address the issue of exactly what quantity of emission reductions New Jersey can attribute to the revised subchapter 23 in a future **Federal Register** action. These emission reductions are required to meet the additional emission reductions EPA identified as needed to meet the 1-hour ozone standard. In addition, the entire State of New Jersey is classified as nonattainment for the 8-hour ozone standard. In order to attain this standard, New Jersey will need to achieve further reductions in VOC and nitrogen oxides.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 proposes to approve 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 proposed 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 of 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 proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 12, 2005.

George Pavlou,

Acting Regional Administrator, Region 2.

[FR Doc. 05–14406 Filed 7–20–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. R02–OAR–2005–NY–0003, FRL–7942–6]

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 is proposing to approve a revision to the New York State Implementation Plan (SIP) concerning New York's permitting program. The

SIP revision consists of amendments to Title 6 of the New York Codes, Rules and Regulations, Part 201, ''Permits and Certificates.'' The intended effect of this proposal is to incorporate administrative changes to New York's permitting program into the SIP.

DATES: Comments must be received on or before August 22, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R02–OAR–2005–NY–0003 by one of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

1. Agency Web site: *http://docket.epa.gov/rmepub/.* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

2. E-mail: *Werner.Raymond@epa.gov.*

3. Fax: (212) 637–3901.

4. Mail: ''RME ID Number R02–OAR–2005–NY–0003,'' Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

5. Hand Delivery or Courier. Deliver your comments to: 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 to 4:30 excluding Federal holidays.

A copy of the New York's submittal is 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 or *Wieber.Kirk@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Was Included in New York's Submittal?

On June 16, 1996, David Sterman, then Deputy Commissioner, New York State Department of Environmental Conservation (NYSDEC), submitted to EPA a revision to the State Implementation Plan (SIP) which included revisions to Title 6 of the New York Codes, Rules and Regulations (NYCRR), Part 201, ''Permits and Certificates.'' The revisions to Part 201 were submitted by New York in support of its title V Operating Permit Program under the Clean Air Act (Act), and became State effective on July 7, 1996. New York requested at that time that Subparts 201–1, 201–2, 201–3, 201–4, 201–5, 201–7, 201–8 and Appendix B be incorporated into the federally approved SIP, replacing the existing federally approved version of Part 201. EPA has deferred taking action on those revisions to Part 201 due to unresolved concerns raised by the EPA and NYSDEC regarding specific Subparts. However, on May 27, 2005, Carl Johnson, Deputy Commissioner, NYSDEC, submitted a SIP revision requesting EPA's approval of only Subparts 201–7.1, ''General'' and 201–7.2, ''Emission Capping Using Synthetic Minor Permits,'' as were State effective on July 7, 1996, and the removal of Subpart 201.5(e) of the existing federally approved version of Part 201.

II. What Provisions to Part 201 Is EPA Acting On?

A. Subparts 201–7.1 and 201–7.2

The Subpart 201–7.1 and 201–7.2 provisions concern ''federally enforceable emission caps.'' These provisions allow owners or operators of stationary sources to accept permit conditions which restrict or ''cap'' emissions in order to avoid being subject to one or more applicable requirements regarding the source or emission unit. Typically, such a source has actual emissions substantially below its potential emissions and the cap would prevent increasing emissions. The owner or operator applying for an emission cap permit modification must include a proposed monitoring, recordkeeping, and reporting strategy that will be used to demonstrate that the emissions limitations under the proposed cap are verifiable, and enforceable, along with the proposed permit terms and conditions. Capping methods may include: The reduction in the hours of operation; reformulations relating to the cap, installation of control equipment; and/or other process changes.

On an annual basis, beginning one year after the granting of an emissions cap, the responsible official shall provide a certification to the NYSDEC that the facility has operated all emission units within the limits imposed by the emission cap. Facilities subject to this provision must keep records on-site for a minimum of five years. Emission caps established by New York pursuant to Subpart 201–7.2 are subject to public review and comment, as required by 201–7.2(b).

Although Subpart 201–7.1 makes reference to Subpart 201–7.3, EPA is not taking action on Subpart 201–7.3 at this time. However, Subpart 201.7.3 remains State enforceable.

EPA has determined that New York's revised Subparts 201–7.1 and 201–7.2 can be incorporated into the SIP. EPA recognizes federally enforceable limits or caps on potential to emit to be approvable. In addition, New York's revised Subparts 201–7.1 and 201–7.2 are designed to ensure that the limits on potential to emit are legally and practically enforceable. An August 27, 1996, EPA policy memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Extension of January 25, 1995 Potential to Emit Transition Policy'' states that, in light of the court's decision in *Clean Air Implementation Project v. EPA,* No. 96–1224 (D.C. Cir., June 28, 1996), the term ''federally enforceable'' in 40 CFR 70.2 should now be read to mean ''federally enforceable or legally and practicably enforceable by a state or local air pollution control agency.'' New York's revised Subparts 201–7.1 and 201–7.2 are currently State enforceable. The inclusion of these provisions into the SIP will ensure that New York's revised Subparts 201–7.1 and 201–7.2 are federally enforceable as well. EPA is therefore proposing approval.

B. Subpart 201.5(e)

As part of New York's May 27, 2005, submittal, New York requested that EPA remove existing Subpart 201.5(e) from the federally approved SIP. Subpart 201.5(e) concerns excess emissions during maintenance, malfunctions, and start-up.

On September 20, 1999, EPA issued a policy memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown.'' On November 8, 2001 and December 5, 2001, EPA issued a memorandum of clarification in

regard to the September 20, 1999, policy memorandum.

Because excess emissions might aggravate air quality so as to prevent attainment or interfere with maintenance of the ambient air quality standards, EPA views all excess emissions as violations of the applicable emission limitation. Nevertheless, EPA recognizes that imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner or operator may not be appropriate. EPA's 1999 policy memorandum further specifies what is allowable and when and in what manner SIP's may provide for defenses of violations caused by periods of excess emissions due to malfunctions, startup, or shutdown.

New York's Subpart 201.5(e) was initially incorporated into the SIP prior to the issuance of this policy memorandum. EPA has determined that New York's Subpart 201.5(e) does not meet the required criteria for excusing excess emissions from maintenance, malfunctions or startup, as outlined in the 1999 EPA policy memorandum. Therefore, EPA agrees with New York's request to remove it from the federally enforceable SIP.

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 201.7, ''Federally Enforceable Emission Caps,'' specifically the inclusion of Subparts 201–7.1, ''General'' and 201–7.2, ''Emission Capping Using Synthetic Minor Permits'' meet the SIP revision requirements of the Act. In addition, EPA has determined that existing Subpart 201.5(e) should no longer be included in the Federally approved SIP. Therefore, EPA is proposing to approve revised Subparts 201–7.1 and 201–7.2 into the Federally approved New York SIP and remove existing Subpart 201.5(e) from the federally approved New York SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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.*). This rule proposes to approve pre-existing requirements under state law, does not impose any additional enforceable duty beyond that required by state law, and 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 proposed 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 proposes to approve 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 proposed 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 proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 12, 2005.

George Pavlou,

Acting Regional Administrator, Region 2.

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