

result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their

regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 8 a.m. on November 1, 2006 until 5 p.m. March 1, 2007; from 8 a.m. on November 1, 2007 until 5 p.m. March 1, 2008; and from 8 a.m. on November 1, 2008 until 5 p.m. March 1, 2009, in § 117.733, suspend paragraph (b) and add a new paragraph (l) to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(l) From 8 a.m. on November 1, 2006 until 5 p.m. March 1, 2007; from 8 a.m. on November 1, 2007 until 5 p.m. March 1, 2008; and from 8 a.m. on November 1, 2008 until 5 p.m. March 1, 2009, the Route 35 Bridge, mile 1.1, at Brielle may remain closed to navigation.

Dated: July 11, 2005.

Larry L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 05–14322 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. R02–OAR–2005–NJ–0002, FRL–7942–7]

Approval and Promulgation of Implementation Plans; New Jersey Architectural Coatings Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New Jersey State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The SIP revision consists of amendments to Subchapter 23 "Prevention of Air Pollution From Architectural Coatings" of 7:27 of the New Jersey Administrative Codes, which are needed to meet the shortfall in emissions reduction identified by EPA in New Jersey's 1-hour ozone attainment demonstration SIP. The intended effect of this action is to approve a control strategy required by the Clean Air Act, which will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

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–NJ–0002 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 research," 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-NJ-0002", 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 Jersey 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 Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Paul R. Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3711.

SUPPLEMENTARY INFORMATION:

I. What Is Required by the Clean Air Act and How Does It Apply to New Jersey?

Section 182 of the Clean Air Act (Act) specifies the required State Implementation Plan (SIP) submissions and requirements for areas classified as nonattainment for ozone and when these submissions and requirements are to be submitted to EPA by the states. The Specific requirements vary depending upon the severity of the ozone problem. The New York-Northern New Jersey-Long Island and Philadelphia, Wilmington, Trenton nonattainment areas are nonattainment areas classified as severe. Under section 182, severe nonattainment areas were required to submit demonstrations of how they would attain the 1-hour ozone standard. On December 16, 1999 (64 FR 70380), EPA proposed approval of New Jersey's 1-hour ozone attainment demonstration SIP for the New Jersey

portion of the New York-Northern New Jersey-Long Island nonattainment area and the New Jersey portion of the Philadelphia, Wilmington, Trenton attainment area. In that rulemaking, EPA identified an emission reduction shortfall associated with New Jersey's 1-hour ozone attainment demonstration SIPs, and required New Jersey to address the shortfalls. 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 reduction to close emission shortfalls.

On February 4, 2002 (67 FR 5152), EPA approved New Jersey's 1-hour ozone attainment demonstration SIPs. This approval included an enforceable commitment submitted by New Jersey to adopt additional control measures to close the shortfalls identified by EPA for attainment of the 1-hour ozone standard.

II. What Was Included in New Jersey's Submittal?

On July 28, 2004, Bradley M. Campbell, Commissioner, New Jersey Department of Environmental Protection (NJDEP), submitted to EPA a revision to the SIP which included an adopted revision to subchapter 23, "Prevention of Air Pollution From Architectural Coatings." This SIP revision will provide volatile organic compound (VOC) emission reductions to address, in part, the shortfall identified by EPA when New Jersey's 1-hour ozone attainment demonstrations were approved. New Jersey used the OTC model rules as guidelines to develop its rules.

III. Was Subchapter 23 Previously Approved by EPA?

On August 2, 1997 EPA approved subchapter 23 (62 FR 42414) as part of the New Jersey SIP. The July 20, 2004 submittal modifies subchapter 23 as previously approved.

IV. How Was Subchapter 23 Promulgated?

The NJDEP published the proposed rulemaking in the New Jersey Register on July 21, 2003 (35 N.J.R. 2983) and announced that a public hearing would be held, on September 9, 2003, in Trenton, New Jersey. NJDEP provided copies of the newspaper announcements and certification of publication. The public hearing was held on September

9, 2003 and thirteen individuals provided written and/or oral comments. The NJDEP prepared a summary of the comments and then evaluated the comments. NJDEP then prepared a response to the comments. The State adopted the revisions to Subchapter 23 on May 21, 2004 and published the adoption in the New Jersey Register on June 21, 2004 (36 N.J.R. 3078). Also published in the New Jersey Register was a summary of the comments received, the State response to the comments and any changes to the proposed rule resulting from the comments.

V. What Are the Requirements for "Architectural Coatings"?

The revised Subchapter 23 now regulates 53 separate coating categories, some contain additional subcategories, which apply statewide. These categories are based on the original New Jersey subchapter 23, from the National AIM rule (see CFR part 59, subpart D), and the OTC Model rule. The revised subchapter 23 requires that, on or after January 1, 2005, no person shall sell, supply, offer for sale, or manufacture architectural coatings or apply architectural coatings for compensation which contain VOC's in excess of the VOC content limits. Subchapter 23 includes specific exemptions, as well as registration and product labeling requirements, recordkeeping and reporting requirements, and test methods and procedures.

Architectural coatings that are sold in New Jersey for shipment and use outside of the State of New Jersey are exempt from the VOC content limits, and administrative and testing requirements of subchapter 23. This exemption reflects the intent to regulate only the manufacture and distribution of architectural coatings that actually emit VOCs into New Jersey's air and not to interfere in the transportation of goods that are destined for use outside of the State. In addition, aerosol coating products and architectural coatings sold in containers holding one liter or less are also exempt.

Subchapter 23 contains provisions for accepting limited timeframe variances or exemptions that have been approved by another state or one of the California air quality management districts that have rules substantially equivalent to subchapter 23 and that have product categories and VOC content limits identical to subchapter 23. The State provisions specify the required documentation that must be submitted and the conditions under which New Jersey will recognize a limited timeframe variance or exemption that

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, EPA 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]

BILLING CODE 6560-50-M

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