

Part 239 also includes a permeation rate for spill-proof systems only.

Part 239 allows the manufacturers of noncompliant products a one year sell-through period. Manufacturers may continue to sell an existing product provided that the products were manufactured before January 1, 2003, and the date of manufacture or a date code representing the date of manufacture is clearly displayed on that product.

Part 239 also establishes IPE provisions which allow for alternatives to complying with the performance standards specified in part 239. As in the case of part 235, if a manufacturer was granted an IPE pursuant to the CARB provisions, the IPE can become effective in New York State for the period of time that the CARB IPE remains in effect. Section 2467.4 of title 13 of the California Code of Regulations, specifies the CARB provisions applicable to portable fuel containers. Any manufacturer seeking such an exemption on this basis must submit to the NYSDEC, a copy of the CARB IPE decision (*i.e.*, the Executive Order), which includes all conditions established by CARB applicable to the IPE. For those portable fuel containers or spouts that have not been granted an exemption by CARB, the manufacturer may apply to the NYSDEC for an IPE in accordance with the criteria specified in part 239.

In addition, part 239 provides procedures for obtaining a variance. Any person who cannot comply with the performance standards set forth in part 239, due to extraordinary reasons that are beyond that person's reasonable control, may apply in writing to the NYSDEC for a variance. An application for a variance must specify the grounds upon which the variance is sought, the proposed date(s) by which compliance with the part 239 VOC limits will be achieved and a compliance report reasonably detailing the method(s) by which compliance will be achieved.

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 226, part 235 and new part 239 of title 6 of the New York Codes, Rules and Regulations, entitled, "Solvent Metal Cleaning", "Consumer Products" and "Portable Fuel Container Spillage Control", respectively, meet the SIP revision requirements of the Act with the following exception. While the provisions related to alternate test methods, variances, innovative products and alternate compliance plans

pursuant to part 235, "Consumer Products" or part 239, "Portable Fuel Container Spillage Control" are acceptable, the specific application of those provisions (those that are granted or accepted by NYSDEC) will not be recognized as meeting Federal requirements until they are approved by EPA on a case-by-case basis as a SIP revision. Therefore, EPA is proposing to approve the regulations as part of the New York SIP with the exception that the specific application of provisions associated with alternate test methods, variances, innovative products and alternate compliance plans, must be submitted as SIP revisions.

In addition, the revisions to part 226, "Solvent Metal Cleaning" are being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrent with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this document, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made to part 226 as cited in this document, EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by New York and submitted formally to EPA for incorporation into the SIP. It should be noted, that if for some reason the adoption process by New York for part 226 is delayed, it is likely that EPA will proceed with a final rulemaking action on the revisions to parts 235 and 239 and address the final rulemaking action for part 226 separately.

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.*). 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 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.