

with populations less than 50,000. Because this safety zone is very small, will only be in effect for six days, and does not impede access to other maritime facilities in the area, the Coast Guard believes there will be no impact to small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under Figure 2-1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because it establishes a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093, October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

#### Temporary Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. From 12:01 a.m. on May 4, 2000, until 11:59 p.m. on May 9, 2000, § 165.T17-00-001 is temporarily added to read as follows:

#### § 165.T17-00-001 Safety Zone; Kachemak Bay, Alaska.

(a) *Description.* The following area is a Safety Zone: All navigable waters within a 200 yard radius of the Heavy-lift vessel SWAN, located in Kachemak Bay, Alaska.

(b) *Effective Dates.* This section is effective from 12:01 a.m. on May 4, 2000, until 11:59 p.m. on May 9, 2000.

(c) *Regulations.*

(1) The Captain of the Port means the Captain of the Port, Western Alaska. The Captain of the Port may authorize or designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf as his representative.

(2) The general regulations governing safety zones contained in Title 33 Code of Federal Regulations, § 165.23 apply. No person or vessel may enter, transit through, anchor or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port, Western Alaska, or his representative. The Captain of the Port or his representative may be contacted in the vicinity of the SWAN via marine VHF channel 16. The Captain of the Port's representative can also be contacted by telephone at (907) 271-6700.

Dated: April 13, 2000.

**W.J. Hutmacher,**

*Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.*

[FR Doc. 00-10607 Filed 4-27-00; 8:45 am]

**BILLING CODE 4910-15-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[Region II Docket No. NY42-21-1; FRL-6583-8]

#### Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for the State of New York

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving New York's revisions to the State Implementation Plan (SIP) for ozone. The State submitted this portion of the implementation plan to satisfy Clean Air Act (the Act) requirements for adoption of rules for the application of reasonably available control technology (RACT) for oxides of nitrogen (NO<sub>x</sub>) in the entire State. The intended effect of this SIP revision is to reduce emissions of NO<sub>x</sub> from combustion sources in order to help attain the national ambient air quality standard for ozone.

**EFFECTIVE DATE:** This rule will be effective May 30, 2000.

**ADDRESSES:** Copies of the state submittal(s) 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, SW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Ted Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637-3892.

#### SUPPLEMENTARY INFORMATION:

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#### What Action Is EPA Approving?

The EPA is approving revisions to New York's ozone State Implementation Plan (SIP) which New York submitted to EPA on January 20, 1994 and April 29, 1999. The January 20, 1994 submittal includes New York's Subpart 227-2 entitled "Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO<sub>x</sub>)." The April 29, 1999 submittal includes amendments to Subpart 227-2. A separate EPA action approved other portions (Part 200, Part 201, Subpart 227-1 and Subpart 227-3) of the January 1994 and April 1999 submittals in a **Federal Register**

document published at 65 FR 20905 on April 19, 2000.

### Why Is EPA Approving This Action?

EPA is approving this action because it determined that New York's SIP revisions meet all requirements of the Clean Air Act (the Act), EPA guidelines and EPA policy thereby allowing implementation and enforcement of NO<sub>x</sub> RACT requirements statewide.

### When Did EPA Propose To Approve New York's SIP Revisions?

On January 5, 2000, EPA published in the **Federal Register** (65 FR 421) a Proposed Rulemaking to approve New York's regulations as a SIP revision and providing for a 30-day public comment period, which ended February 4, 2000.

### What Are the Public's Comments on EPA's Proposal?

EPA received no public comments regarding the Proposed Rulemaking.

### Where Is Additional Information Available on EPA's Action?

A detailed discussion of this action is available in the January 5, 2000 Proposed Rulemaking (65 FR 421). A Technical Support Document, prepared in support of the proposed rulemaking, contains the full description of New York's submittals and EPA's evaluation. A copy of the Technical Support Document is available upon request from the EPA Regional Office contact listed above in the **ADDRESSES** section.

### Conclusion

EPA is approving the two SIP revisions that implement New York's NO<sub>x</sub> RACT Program throughout the State for combustion sources, regardless of the nonattainment status. The first SIP revision, dated January 20, 1994, includes Subpart 227-2. The second SIP revision, dated April 29, 1999, includes amendments to Subpart 227-2. Therefore, this rule makes final the action proposed at 65 FR 421.

### Administrative Requirements

#### *Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

#### *Executive Order 13132*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and

timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will 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, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### *Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve

decisions intended to mitigate environmental health or safety risks.

#### *Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the

Clean Air Act, preparation of 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 Comptroller General**

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 rule 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**. This rule is not a “major” rule as defined by 5 U.S.C. 804(2).

**National Technology Transfer and Advancement Act**

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

**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 June 27, 2000. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 23, 2000.

**William J. Muszynski,**  
*Acting Regional Administrator, Region 2.*

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)(97) to read as follows:

**§ 52.1670 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*  
\* \* \* \* \*

(97) Revisions to the State Implementation Plan submitted on January 20, 1994 and April 29, 1999 by the New York State Department of Environmental Conservation that establishes NO<sub>x</sub> RACT requirements Statewide for combustion sources.

(i) Incorporation by reference:

(A) Regulation Subpart 227–2 of Title 6 of the New York Code of Rules and Regulations, entitled “Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO<sub>x</sub>)” adopted on January 19, 1994, and effective on February 18, 1994.

(B) Amendments to Subpart 227–2 adopted on January 12, 1999 and effective on March 5, 1999.

(ii) Additional information

(A) Letters from the New York State Department of Environmental Conservation dated January 20, 1994 and April 29, 1999, submitting the NO<sub>x</sub> RACT Regulation and amendments as revisions to the New York State Implementation Plan for ozone.

(B) Letter from the New York State Department of Environmental Conservation dated April 27, 1999 submitting an analysis of mass NO<sub>x</sub> emissions from generic sources throughout the State as well as resolution of other approvability issues.

3. In section 52.1679, the table is amended by revising the entry for Subpart 227–2 as follows:

**§ 52.1679 EPA-approved New York State regulations.**

New York State regulation	State effective date	Latest EPA approval date	Comments
* * * * *	*	*	*
Subpart 227–2, Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO <sub>x</sub> ).	3/5/99	[4/28/00 65 FR 24877].	*
* * * * *	*	*	*

[FR Doc. 00-10521 Filed 4-27-00; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Part 26

[USCG-1999-5040]

RIN 2115-AF69

#### Safety of Uninspected Passenger Vessels Under the Passenger Vessel Safety Act of 1993 (PVSA)

AGENCY: Coast Guard, DOT.

ACTION: Interim rule.

**SUMMARY:** The Coast Guard establishes this interim rule to provide for the issuance of special permits to uninspected vessels under the Passenger Vessel Safety Act of 1993 (PVSA). That Act authorizes the Coast Guard to amend operating and equipment guidelines for uninspected passenger vessels over 100 gross tons, carrying 12 or less passengers for hire. In addition, it authorizes the Coast Guard to issue special permits for vessels participating in a Marine Event of National Significance, such as OPSAIL 2000 and Tall Ships 2000.

**DATES:** This interim rule is effective May 12, 2000.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-1999-5040 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For questions on this rule, call Lieutenant Commander Michael A. Jendrossek, Office of Operating and Environmental Standards (G-MSO-2), Coast Guard, telephone 202-267-0836. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

On September 30, 1994, we published Navigation and Vessel Inspection Circular (NVIC) No. 7-94 to provide compliance and enforcement guidance

to Coast Guard members on implementing the provisions of the PVSA while detailed regulations were being developed. The NVIC addressed the statutory changes in detail, including one of the more significant changes requiring all chartered vessels carrying more than 12 passengers to be inspected by the Coast Guard. The PVSA allowed these vessels to apply for inspection with a phase-in period for compliance. The period for application for inspection expired on June 21, 1994, and the period for compliance expired on December 21, 1996. With widespread public notification, several hundred charter vessels applied for and met the conditions for certification with the requirements of the PVSA and policy guidance of the NVIC.

The NVIC also provided extensive guidance to Coast Guard Marine Safety field units on implementing the provisions of the new law. For those interested in viewing a copy of NVIC 7-94, it is available in this rulemaking docket as indicated under **ADDRESSES** and also on the Internet at [www.uscg.mil/hq/g-m/nvic/index90.htm](http://www.uscg.mil/hq/g-m/nvic/index90.htm).

On April 1, 1999, the Coast Guard published an advanced notice of proposed rulemaking (ANPRM) in the **Federal Register** (64 FR 15709), notifying the public of the intent of this rulemaking and requesting comments in several areas. We received nine letters in response to the ANPRM.

On March 2, 2000, we published a notice of proposed rulemaking (NPRM) entitled "Safety of Uninspected Passenger Vessels Under the Passenger Vessel Safety Act of 1993 (PVSA)" in the **Federal Register** (65 FR 11410). Almost all of the changes proposed there are still open for public comment. Proposed section 26.03-8, however, was issued with a 30-day comment period to enable the Coast Guard to have regulations in place for this year's millennium celebrations involving sailing vessels from around the world, beginning May 25, 2000. The Coast Guard was not sure that certain vessels would need an exemption in order to participate in this celebration, thus we did not propose these regulations earlier. We received six comments on this proposed section. No public hearing was requested, and none was held.

##### Effective Date

The Coast Guard finds having these regulations in place before this year's Marine Event of National Significance begins constitutes good cause under the Administrative Procedure Act (5 U.S.C. § 553(d)(3)) for an effective date of less

than 30 days. These regulations will take effect on May 12, 2000.

##### Background and Purpose

The PVSA authorizes the Coast Guard to develop regulations to issue special permits to uninspected vessels. This broadens the Coast Guard's authority from the excursion permit for inspected vessels to carry passengers for unique events. Under this authority, we proposed issuing special permits to the owner or operator of a vessel that is a registered participant in an event that the Commandant, U.S. Coast Guard, declares as a Marine Event of National Significance.

##### Discussion of Comments and Changes

The following is a summary of the comments we received concerning the proposed section 26.03-8 in the Notice of Proposed Rulemaking. We received six comments concerning the Coast Guard's implementation of special permits for Marine Events of National Significance.

One comment from The American Sail Training Association requests that Tall Ships 2000, scheduled to take place from 12 June to 16 July 2000, be granted designation as a Marine Event of National Significance. The Commandant has determined that Tall Ships 2000 meets the criteria necessary to be designated as such an event. Therefore, Tall Ships 2000 has been officially designated as a Marine Event of National Significance. In the NPRM for this rule, we noted that the Commandant had designated OPSAIL 2000 as a Marine Event of National Significance (65 FR 11410).

We received four comments that specifically address foreign flagged vessels carrying passengers in coastwise trade.

One comment states that the Coast Guard cannot permit foreign flagged vessels to transport passengers in the U.S. coastwise trades. The Coast Guard concurs with this comment. The Passenger Vessel Services Act (46 U.S.C. App. 283) prohibits the transportation of merchandise and passengers between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States. However, the United States Customs Service has defined a passenger as "\* \* \* any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business" (19 CFR § 4.50 [b]). Based on this definition, the Customs Service has held that a person