

governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (64 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 1, 2004, **Federal Register** notice.

#### Congressional Review Act

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. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 7, 2005. 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 action is not a "major rule" as defined by U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: January 28, 2005.

**Oscar Morales,**

*Director, Collection Strategies Division, Office of Information Collection.*

■ For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

#### PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 7. U.S.C. 135 *et seq.*, 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901-6002k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

■ 2. In § 9.1 the table is amended by adding a new entry to read as follows:

#### § 9.1 OMB approvals under the Paperwork Reduction Act.

40 CFR citation	OMB control No.
* * * * *	* * * * *
Determining Coformity of Federal Actions to State or Federal Implementation Plans	
Part 93, subpart A .....	2060-0561
* * * * *	* * * * *

[FR Doc. 05-2306 Filed 2-4-05; 8:45 am]

BILLING CODE 6560-50-M

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[R01-OAR-2004-ME-0003; A-1-FRL-7863-2]

#### Approval and Promulgation of Air Quality Implementation Plans; Maine; Portable Fuel Containers

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes requirements to reduce volatile organic compound (VOC) emissions from portable fuel containers. The intended effect of this action is to approve these requirements into the Maine SIP. EPA is taking this action in accordance with the Clean Air Act (CAA).

**DATES:** This direct final rule will be effective April 8, 2005, unless EPA receives adverse comments by March 9, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01-OAR-2004-ME-0003 by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. 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.

3. E-mail: [conroy.dave@epa.gov](mailto:conroy.dave@epa.gov).

4. Fax: (617) 918-0661.

5. Mail: "RME ID Number R01-OAR-2004-ME-003" David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114-2023.

6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. 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.

**Instructions:** Direct your comments to Regional Material in EDocket (RME) ID Number R01-OAR-2004-ME-0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in

EDocket (RME), regulations.gov, or e-mail. The EPA RME website and the federal regulations.gov website are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the Regional Material in EDOCKET (RME) index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., 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 in RME or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Anne Arnold, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114-2023, (617) 918-1047, [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### *A. How Can I Get Copies of This Document and Other Related Information?*

In addition to the publicly available docket materials available for inspection

electronically in Regional Material in EDOCKET, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333-0017.

### **II. Rulemaking Information**

This section is organized as follows:

- A. What Action is EPA Taking?
- B. What Are the Requirements of Maine's New Regulation?
- C. Why Is EPA Approving Maine's Regulation?
- D. What Is the Process for EPA To Approve This SIP Revision?

#### *A. What Action Is EPA Taking?*

EPA is approving Maine's Chapter 155, "Portable Fuel Container Spillage Control," and incorporating this regulation into the Maine SIP.

#### *B. What Are the Requirements of Maine's New Regulation?*

Chapter 155 includes performance standards for portable fuel containers and spouts in order to ensure spill-proof systems. Chapter 155 prohibits any person to sell, supply, offer for sale, or manufacture for sale in Maine, on or after January 1, 2004, any portable fuel container or spout that does meet all of the specified performance standards. However, there is a one year sell-through period whereby containers and spouts manufactured before January 1, 2004 may be sold, supplied, or offered for sale until January 1, 2005. The rule also includes the appropriate testing and recordkeeping requirements to ensure compliance with the specified performance standards.

#### *C. Why Is EPA Approving Maine's Regulation?*

EPA has evaluated Maine's Chapter 155 and has found that this regulation is consistent with EPA guidance and the OTC model rule for portable fuel containers. The specific requirements of the regulation and EPA's evaluation of these requirements are detailed in a memorandum dated December 22, 2004, entitled "Technical Support Document—Maine—Portable Fuel Containers Regulation" (TSD). The TSD and Maine's Chapter 155 are available in the docket supporting this action.

As noted in the TSD, when Maine submitted this regulation for approval and incorporation by reference into the

SIP, the state did not submit the word "or" in subsection 7(C) of Chapter 155.<sup>1</sup> In adopting Chapter 155, Maine was responding to a comment from EPA on this subsection in which EPA made it clear that any alternative test methods would have to be approved by both Maine DEP and EPA. DEP inadvertently used the formulation "and/or" to respond to EPA's comment, despite the fact that it is DEP's intent and commitment to EPA that any alternative test methods will have to be approved by both DEP and EPA. Therefore, DEP deleted the word "or" from subsection 7(C) when DEP submitted it to EPA for approval to clarify DEP's intent in implementing this provision.

The OTC (Ozone Transport Commission) has developed model rules for several VOC source categories, and the OTC states, including Maine, have signed a memorandum of understanding (MOU) committing to adopt these model rules. One of the categories for which a model rule has been developed is portable fuel containers. (See "OTC Model Rule: Portable Fuel Container Spillage Control," March 6, 2001.)

The OTC model rule for portable fuel containers was based on a similar rule adopted by the California Air Resources Board (CARB). Compliance with CARB's rule was due in January 2001. Several other OTC states have also recently adopted a portable fuel container rule based on the OTC model rule and EPA has already approved some of these states' rules.<sup>2</sup>

#### *D. What Is the Process for EPA To Approve This SIP Revision?*

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective April 8, 2005 without further notice unless the EPA receives adverse comments by March 9, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will

<sup>1</sup> Subsection 7(C) reads "Alternative methods that are shown to be accurate, precise and appropriate may be used upon written approval of the Department and/or EPA." When submitting Chapter 155 to EPA for approval into the SIP, Maine deleted "/or" from this sentence.

<sup>2</sup> For example, EPA approved the portable fuel container rules adopted by New York and Maryland on January 23, 2004 (69 FR 3237), and June 29, 2004 (69 FR 38848), respectively.

not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 8, 2005 and no further action will be taken on the proposed rule.

### III. Final Action

EPA is approving Maine's Chapter 155, "Portable Fuel Container Spillage Control," and incorporating this regulation into the Maine SIP.

### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 (Public Law 104-4).

This 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), 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. This 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 Clean Air 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 Clean Air 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 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.*).

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**. 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 April 8, 2005. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

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, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 12, 2005.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

■ Part 52 of 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 U—Maine

■ 2. Section 52.1020 is amended by adding paragraph (c)(53) to read as follows:

#### § 52.1020 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(53) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on December 29, 2003, October 22, 2004, and December 9, 2004.

(i) Incorporation by reference.

(A) Chapter 155 of the Maine Department of Environmental Protection Regulations, "Portable Fuel Container Spillage Control," effective in the State of Maine on July 14, 2004, with the exception of the word "or" in Subsection 7C which Maine did not submit as part of the SIP revision.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. In § 52.1031, Table 52.1031 is amended by adding a new state citation, 155, to read as follows:

#### § 52.1031 EPA-approved Maine regulations.

\* \* \* \* \*

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020
155 .....	Portable Fuel Container Spillage Control.	6/3/04	2/7/05	[Insert <i>FR</i> citation from published date].	(c)(53) All of Chapter 155 is approved with the exception of the word “or” in Subsection 7C which Maine did not submit as part of the SIP revision.

**Note.**—1. The regulations are effective statewide unless stated otherwise in comments section.

[FR Doc. 05–2060 Filed 2–4–05; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[OAR–2003–0194; FRL–7869–7]

RIN 2060–AL89

### National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations

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

**ACTION:** Direct final rule; amendments.

**SUMMARY:** The EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for leather finishing operations, which were issued on February 27, 2002, under section 112 of the Clean Air Act (CAA). The direct final amendments clarify the frequency for categorizing leather product process types, modify the definition of “specialty leather,” add a definition for “vacuum mulling,” and add an alternative procedure for determining the actual monthly solvent loss from an affected source. We are issuing the amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no significant adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the national emission standards for leather finishing operations if significant adverse comments are filed.

**DATES:** The direct final rule is effective on February 28, 2005 without further notice, unless EPA receives adverse written comment by February 17, 2005 or by February 22, 2005 if a public hearing is requested. If significant adverse comments are received, EPA

will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective, and which provisions are being withdrawn due to adverse comment.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR–2003–0194, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA’s electronic public docket and comment system, is EPA’s preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: [air-and-r-docket@epa.gov](mailto:air-and-r-docket@epa.gov).
- Fax: (202) 566–1741.

- Mail: EPA Docket Center, EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a duplicate copy, if possible.

- Hand Delivery: Air and Radiation Docket, EPA, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

**Instructions:** Direct your comments to Docket ID No. OAR–2003–0194. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the federal

[regulations.gov](http://www.regulations.gov) websites are “anonymous access” systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

**Docket:** All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., 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 in EDOCKET or in hardcopy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. 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, and the telephone number for the Air Docket is (202) 566–1742.