significant economic impact on a substantial number of small entities.

F. 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 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 costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on 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.

G. 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.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

H. 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

I. 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 November 28, 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: August 18, 2000.

Nora McGee,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. Authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraphs (c)(18)(iv)(C) and (c)(84)(i)(E) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(18) * * *

(iv) * * *

(C) Previously approved on December 17, 1979 and now deleted without replacement Rule 7–3–2.5.

* * * * *

(84) * * *

(i) * * *

(E) Rules 5–22–950, 5–22–960, and 5–24–1045 codified on February 22, 1995.

* * * * *

[FR Doc. 00–24568 Filed 9–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY43a–212, FRL–6873–2]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the New York State Implementation Plan for ozone concerning the control of volatile organic compounds and oxides of nitrogen. This revision was submitted to comply with provisions of the Clean Air Act (CAA) relating to the adoption of vehicle refueling controls or comparable measure(s) in the upstate portion of New York State. The intended effect of this action is to approve a program required by the CAA which will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

DATES: This direct final rule is effective on November 28, 2000 without further notice, unless EPA receives adverse comment by October 30, 2000. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the state submittal are 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, 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: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA taking?

The Environmental Protection Agency (EPA) is approving the Stage II (control of gasoline vapors resulting from the refueling of vehicle fuel tanks at gasoline service stations) comparability demonstration that the New York State Department of Environmental Conservation (NYSDEC) submitted on April 18, 2000. EPA is approving this submittal into the New York State Implementation Plan (SIP) because it meets the requirements of section 184(b)(2) of the Clean Air Act (CAA).

II. What Are the CAA Requirements for Stage II Comparability?

Historically, there has been a major ozone nonattainment problem in the northeastern United States. A significant portion of the problem is the result of regional transport of ozone and ozone precursors (volatile organic compounds (VOC) and oxides of nitrogen (NO_X)). To address this problem of interstate transport ozone air pollution, section 184 of the CAA specifically created the Ozone Transport Region (OTR), which includes the entire states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, and the District of Columbia consolidated metropolitan statistical area, which includes a portion of Virginia.

The CAA established five classifications of ozone nonattainment areas. In ascending order of severity of the air pollution problem, these are: marginal, moderate, serious, severe, and extreme. In addition, there are three types of nonclassifiable ozone nonattainment areas: submarginal, transitional, and incomplete/no data. The CAA requires specific control requirements according to the designation and classification of each area.

Section 184 also provides for a specific set of additional requirements for the OTR designed to address the regional transport problem. These additional requirements include control measures for attainment as well as nonattainment areas. For the OTR, there are two requirements related to Stage II vehicle refueling controls. One is the section 182(b)(3) requirement that all moderate and above nonattainment areas must adopt Stage II vehicle refueling controls. The New York City Metropolitan Area (including portions of Orange County) is classified as a severe ozone nonattainment area, and therefore, it adopted Stage II vehicle refueling controls, which were approved by EPA on April 30, 1998 (63 FR 23665). Pursuant to section 202(a)(6) of the CAA, moderate areas were released from this requirement when EPA promulgated onboard vapor recovery rules.

The second OTR requirement is the section 184(b)(2) requirement that all areas in the OTR must adopt Stage II or alternative measures capable of achieving comparable emissions. Because states that contain serious and above nonattainment areas must implement Stage II programs under section 182(b)(3), those areas, even after promulgation of the onboard regulations, cannot take advantage of the flexibility provided by section 184(b)(2) to adopt a comparable measure instead.

Section 184(b)(2) of the CAA requires that states in the OTR to adopt Stage II or comparable measures within one year of EPA completion of a study identifying control measures capable of achieving emissions reductions comparable to the reductions achievable through section 182(b)(3) Stage II vehicle refueling controls. EPA completed its study ''Stage II Comparability Study for the Northeast Ozone Transport Region'' (EPA–452/R–94–011) on January 13, 1995. Therefore, New York was required to either adopt Stage II in areas outside the New York City Metropolitan area or adopt comparable regulations.

III. What Measures Are Included in New York's Stage II Comparability SIP?

To demonstrate that it has met the CAA Stage II comparability requirement, New York relies on NO_X controls in lieu of implementing the control of VOCs at gasoline service stations in the upstate portion of New York State. These NO_X reductions will serve as comparable emission reductions as defined in section 184(b)(2) of the CAA.

On September 27, 1994, the Ozone Transport Commission (OTC) agreed to a Memorandum of Understanding (MOU) committing the signatory states to the development and implementation of a region-wide NO_X emission reduction. The OTC MOU promotes emission reductions at utility and large industrial boilers for the purpose of reducing ozone season NO_X emissions and further the effort to achieve the federal health-based standards.

The OTC NO_X MOU calls for states to reduce NO_X emissions from boilers and indirect heat exchangers with heat inputs greater than 250 million Btu per hour. These reductions will be realized in two phases, the first phase is implemented in 1999 and the second in 2003.

In order to comply with the 1999 reductions of the OTC NO_X MOU, New York State adopted subpart 227–3 entitled the ''Pre-2003 Nitrogen Oxides Emissions Budget and Allowance Program'' on March 5, 1999. EPA approved subpart 227–3 as part of the SIP on April 19, 2000 (65 FR 20905). Subpart 227–3 implemented the 1999-2002 NO_X emission reductions by establishing a statewide NO_X Budget for all fossil fuel fired boilers and indirect heat exchangers with a maximum rated heat input capacity of 250 million Btu per hour or greater as well as emissions from other fuel fired electric generating sources with a rated output of 15 megawatts (MW) or greater.

IV. Are States Allowed To Use NO_X Emission Reductions as a Substitute for Stage II VOC Emission Reductions?

Under EPA's interpretation of section 184(b)(2), states have the option of adopting comparable NO_X control measures instead of Stage II. EPA provides the methodology for determining what level of NO_X emission reductions is comparable to Stage II VOC emissions reductions for a particular area, and therefore, allowed to be substituted. NO_X may not be substituted for VOC in areas where there is a waiver under section 182(f) of the CAA from some or all NO_X requirements because such a waiver

indicates that NO_X reductions are either in excess and not necessary for attainment, or NO_X reductions are otherwise not beneficial. New York State has not obtained any such waivers under section 182(f).

V. What Is New York's Stage II Comparability Analysis?

New York State has adopted certain NO_X controls in lieu of implementing the control of VOCs at gasoline service stations in the upstate portion of New York State. New York's analysis relies on the Interim Inventory projections provided in the EPA Stage II Comparability Study for the Northeast Ozone Transport Region, January, 1995. The EPA study projects for Stage II vapor recovery VOC emission reductions of 25 tons per day (tpd) for the upstate portion of New York State. The New York City Metropolitan Area is classified as a severe ozone nonattainment area, and therefore, it is not eligible for inclusion in this comparability analysis.

New York's Phase II NO_X budget and allocation program established a state-wide cap of 46,959 tons for the ozone season (May 1–September 30). These 46,959 tons were allocated to the affected sources through a negotiation process involving representatives from each affected facility. The 5-month budget was divided by 153 days (total number days in the ozone season) to provide a ton per day (tpd) figure. After removing the sources located in the severe nonattainment area, the aggregated creditable reduction for Stage II substitution from remaining affected sources equates to 81.6 tpd NO_X.

EPA provides a NO_X to VOC substitution ratio in the percent of each total inventory basis. Ratios for each state in the OTR are presented in EPA's Stage II Comparability Study for the Northeast Ozone Transport Region, table 5–1. The 81.6 tpd of NO_X equates to 102 tpd VOC when using this substitution ratio.

VI. Why Is EPA Approving New York's Stage II Comparability SIP Revision?

EPA has evaluated New York's Stage II comparability SIP revision and finds it consistent with the CAA, EPA regulations, and EPA policy. EPA is approving New York's Stage II comparability SIP revision because New York has provided a substitute control measure, Subpart 227–3, which provides greater emission reductions than Stage II and has successfully demonstrated that the substitution of Phase II NO_X controls is a comparable measure to Stage II control for the upstate portion of New York State.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal 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 rule will be effective November 28, 2000 without further notice unless the Agency receives adverse comments by October 30, 2000.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

VII. Administrative Requirements

A. 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.''

B. 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 Executive Order 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.

EPA interprets Executive Order 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 SIP approval is not subject to Executive Order 13045 because it proposes approval of a state program implementing a Federal standard, and it is not economically significant under Executive Order 12866.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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.

D. 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 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.

E. 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 CAA 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, EPA certifies 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 CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA 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).

F. 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 final approval action 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.

G. 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).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 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, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 21, 2000.

William J. Muszynski,

Acting Regional Administrator, Region 2.

40 CFR Part 52 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 52.1683 is amended by adding new paragraph (g) to read as follows:

§ 52.1683 Control strategy: Ozone.

* * * * *

(g) EPA approves as a revision to the New York State Implementation Plan, the Stage II gasoline vapor recovery comparability plan for upstate portions of New York State submitted by the New York State Department of Environmental Conservation on April 18, 2000.

[FR Doc. 00–24789 Filed 9–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301052; FRL–6745–9]

RIN 2070–AB78

Flucarbazone-sodium; Time-Limited Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of flucarbazone-sodium, 4,5-dihydro-3-methoxy-4-methyl-5-oxo-*N*-[[2(trifluoromethoxy)phenyl] sulfonyl]-1*H*-1,2,4-triazole 1-carboxamide, sodium salt) and its *N*-desmethyl metabolite in or on wheat, forage at 0.30 parts per million (ppm); wheat, grain at 0.01 ppm; wheat, hay at 0.10 ppm; and wheat, straw at 0.05 ppm; and combined residues of flucarbazone-sodium and its metabolites converted to 2-(trifluoromethoxy)benzene sulfonamide and calculated as flucarbazone-sodium in or on milk at 0.005 ppm; meat and meat byproducts (excluding liver) of cattle, goats, hogs, horses and sheep at 0.01 ppm; and liver of cattle, goats, hogs, horses and sheep at 1.5 ppm. Bayer Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.