

One commenter pointed out the misuse of the term “moderate” versus “serious” to describe nonattainment areas of the state in two places within the supporting documents. The Department corrected the status in those documents.

One commenter asked for clarification on the compliance dates specified in the proposed new Part 230. The Department verified a compliance date of 6 months for those GDFs that become subject to federal Stage I vapor recovery requirements and a compliance date of 12 months after the effective date of the rule for the removal of Stage II vapor recovery systems.

Justification for Regulatory Changes

One commenter suggested that the opportunity for job growth as a result of the proposal for those servicing GDFs may be a driving force for the rule changes. The Department explained that the goal of the rulemaking was to reduce emissions of volatile organic compounds (VOCs) in New York State and that job growth in this sector is merely a consequence of a proposed regulation designed to protect the environment.

Beyond the Federal Rule

One commenter requested justification for the proposal exceeding the federal GDF standards. The Department defended its position to require medium-sized GDFs in an ozone nonattainment area of the state to comply with federal Stage I vapor recovery requirements to help the state meet the NAAQS and reasonably available control technology (RACT) requirements established under the CAA.

Emissions

Three commenters expressed that the estimated emission reductions for this proposal are low and would have a very small impact on air quality. The commenters also pointed out that current air quality in New York State is improved as a result of the stay home orders due to the pandemic. Based on the preceding, commenters concluded that new regulations to control air pollutant emissions are unnecessary. The Department conveyed that the state faces a significant health challenge from the effects of ground-level ozone caused, in part, by emissions of gasoline vapors and the importance of reducing any amount of pollutant emissions as necessary. The commenters were also reminded that the CAA requires RACT for VOC sources in areas that do not meet the NAAQS and that New York is required to include permanent enforceable and verifiable emission reductions in the State Implementation Plan (SIP) and we cannot assume that temporary changes in emissions due to the pandemic will become permanent.

Compliance Costs

Two commenters were concerned that the costs imposed by the regulatory changes were underestimated and that some were unjustified. The Department explained that cost estimates were obtained from various GDF service providers currently doing business in New York State and costs can vary from vendor to vendor. It was emphasized that costs are associated with the requirement for medium-sized GDFs in the New York Metropolitan area (NYMA) to comply with the federal Stage I vapor recovery standards but that no new costs are being imposed as a result of any other requirements in the proposed new Part 230.

One commenter suggested high cost for continuous monitoring controls was a regulatory burden. The Department clarified that continuous monitoring of the vapor space was not part of the proposed new Part 230.

Two commenters expressed concerns that submerged fill pipes and dual-point collection systems on all gasoline storage tanks would be overly burdensome on industry. The Department clarified that these vapor control requirements are already mandated for all GDFs in the state by the New York State Fire Code and the federal regulations in 40 CFR Part 63 Subpart CCCCC (Subpart 6C).

One commenter argued that the removal of Stage II vapor recovery systems was unnecessary. The Department countered that the removal of these systems is being proposed due to equipment incompatibility with ORVR systems installed on approximately 96% of vehicles in the state. Leaving them in place is causing excess emissions of VOC into the atmosphere and the decommissioning of these systems will help New York State attain the ozone standard.

Cost/Benefit Analysis

Three commenters recommended that the Department redo the cost/benefit analysis that was performed as part of the proposal citing lower emissions from GDFs due to less gas being pumped as result of the pandemic. The Department stressed that the NYMA is still in nonattainment for the ozone NAAQS and emission sources of VOC are required to implement RACT to reduce those emissions under the CAA. The Department further emphasized that New York State is required to include permanent enforceable and verifiable emission reductions in the SIP and cannot base controls on temporary changes in emissions.

Impact on Small Businesses

Two commenters conveyed that most GDFs are small business being unfairly targeted and adversely affected by the proposed regulation. The Department stated that the proposal is not expected to have unfair or

adverse impacts on small businesses since the requirements will apply statewide, in varying degrees, to all GDFs and that the regulation was intended to create air quality benefits for the entire state.

One commenter challenged the estimation of cost savings from the proposal and asserted that any benefits would be in the form of jobs for GDF service providers. The Department explained the cost savings realized by eliminating the need to maintain costly Stage II vapor recovery systems and by reducing lost gasoline product due to the incompatibility of these systems.

One commenter expressed concern that the proposed regulatory changes would impose significant and costly burdens on upstate GDF owners and operators. The Department confirmed there would be no new costs or compliance burdens for any GDFs outside the NYMA as a result of this proposal since these facilities are already subject to these requirements under the New York State Fire Code and the federal GDF regulation.

Suggested Alternatives to Proposal

Three commenters expressed that the Department should rescind the current proposal and merely adopt the federal regulation in Subpart 6C. The Department pointed out that a major part of the proposal is adoption of the federal requirements and that not adopting current federal requirements would leave the regulated community with overlapping and contradictory requirements. The regulation goes beyond federal requirements in regards to medium sized GDFs in the NYMA in order to provide necessary emissions reductions in an area of the state that is in nonattainment.

Requests for Additional Information

One commenter requested information on the modeling that was used to demonstrate when the New York State vehicle fleet would be in “wide-spread use” – meaning when Stage II was determined to be no longer useful in reducing emissions of VOCs. The Department referenced the analysis performed in 2011 which included modeling of the fleet and explained that the results of that analysis were forwarded to EPA for approval to allow removal of Stage II vapor recovery systems.

Outside Scope of Rulemaking

Several comments were received that were outside the scope of this rulemaking.

NOTICE OF ADOPTION

Consumer Products

I.D. No. ENV-06-20-00019-A

Filing No. 8

Filing Date: 2021-01-12

Effective Date: 30 days after filing

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Parts 200 and 235 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105

Subject: Consumer Products.

Purpose: Reduce Volatile Organic Compound emissions from Consumer Products – those products used in the average household.

Substance of final rule: The Division of Air Resources is revising 6 NYCRR Part 235, “Consumer Products” (Part 235) to reduce volatile organic compound (VOC) emissions, improve air quality, and promote regional product consistency. The revisions will help the state attain federal National Ambient Air Quality Standards, and work toward regionally consistent regulations amongst the Ozone Transport Commission (OTC) states.

The revisions include adding nine new product categories and revising ten existing categories in order to reduce the VOC content of the products through lower VOC content limits. Part 200 will be revised to incorporate referenced materials, including American Society for Testing Materials (ASTM) testing procedures, the California Air Resources Board (CARB) provisions supporting this regulation, and to update references to Part 235. Part 235 will be revised to incorporate new definitions and revise some categories in the existing definitions. Additionally, Subpart 235-3 will be updated to add new VOC limits, conform to the revised definitions and product categories, and to remove obsolete text and references.

Changes throughout the proposal include a January 1, 2022 compliance date for the new VOC limits on new and reformulated products in the regulation. Likewise, changes were made in the definitions section to provide transitional language, where necessary, for those categories of products that were redefined or revised, to cite which emission standards apply before or after the compliance date of the regulation.

The revisions include setting VOC content limits for nine new product

categories and lowering the VOC content limits for ten existing product categories. New product categories include definitions for the following terms: aromatic compound, artist’s solvent or thinner, automotive windshield cleaner, high temperature coating, industrial maintenance coating, paint thinner, sanitizer, temporary hair color, and zinc rich primer. Revised definitions include: contact adhesive, electronic cleaner, fabric protectant, floor polish or wax, general purpose cleaner, general purpose degreaser, lubricant, multi-purpose solvent, oven or grill cleaner, and rubber or vinyl protectant.

The lower VOC limits will be applied to adhesives, some automotive cleaners and solvents, disinfectants, household floor and furniture cleaners, paint thinners and some hair care products, among other product categories, as follows:

'Product Category'	'VOC Content Limit' ('percent by weight')		
	Manufactured on or after January 1, 2005	Manufactured on or after January 1, 2010	Manufactured on or after January 1, 2022
Adhesives:			
Construction, Panel, and Floor Covering	15		7
Air Fresheners:			
Dual Purpose Air Freshener / Disinfectant			60
Anti-static Product:			
Aerosol			80
Non-aerosol		11	
Automotive Brake Cleaner[s] or Brake Cleaner			
	45		10
Automotive Windshield Cleaner			
			35
Bathroom and Tile Cleaners:			
All Other Forms	5		n/a
Non-Aerosol			1
Carburetor or Fuel- Injection Air Intake Cleaners			
	45		10
Disinfectant:			
Aerosols			70

'Product Category'	'VOC Content Limit' ('percent by weight')		
	Manufactured on or after January 1, 2005	Manufactured on or after January 1, 2010	Manufactured on or after January 1, 2022
Non-Aerosols			1
Engine Degreasers:			
Aerosols	35		10
Floor Polishes/ Waxes:			
Products for Flexible Flooring Materials	7		1
Products for Nonresilient Flooring	10		1
Furniture Maintenance Products:			
Aerosols	17		
All Other Forms Except Solid or Paste			
	7		n/a
Non-Aerosol (Except Solid or Paste)			
			3
General Purpose Cleaners:			
Aerosols	10		8
General Purpose Degreasers:			
Aerosols	50		10
Laundry Starch Products	5		4.5
Multi-Purpose Solvent			3
Nail Polish Remover	75		1
Oven or Grill Cleaners:			
Aerosol/Pump Sprays	8		
Liquids	5		
Non-Aerosols			4
Paint Thinner			3
Sanitizer:			
Aerosol			70
Non-Aerosol			1
Shaving Gel		7	4
Temporary Hair Color:			
Aerosol			55

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 235-2.1(v), (w), (ae), (bf), (bn), (cs), (cv), (dp), (dv), (eb), (ew), (ey), (fq), (gk), 235-3.1(a), (e), (o) and (p).

Text of rule and any required statements and analyses may be obtained from: Kenneth Newkirk, P.E., NYSEDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3255, (518) 402-8396, email: air.regs@dec.ny.gov

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form and a Coastal Assessment Form have been prepared and are on file.

Summary of Revised Regulatory Impact Statement

1. INTRODUCTION

The New York State Department of Environmental Conservation (Department) Division of Air Resources (DAR) revised 6 NYCRR Part 235, "Consumer Products" (Part 235), to reduce volatile organic compound (VOC) emissions, improve air quality, and promote regional consistency. The revisions will help the state comply with federal Clean Air Act (CAA) requirements pertaining to attainment and maintenance of the ozone National Ambient Air Quality Standards (NAAQS), and maintain regional product consistency in accordance with a memorandum of understanding (MOU) dated June 3, 2010 among the Ozone Transport Commission (OTC) states. The revisions include adding new categories and revising others in order to make the New York regulation consistent with the 2010 OTC model rule as amended through 2013 and regulations adopted by nearby states. Additionally, 6 NYCRR Subpart 235-3, "Standards" (Subpart 235-3) will be updated to conform to the revised definitions and product categories, and to remove obsolete text and references. This proposal will also make attendant changes to 6 NYCRR Part 200, "General Provisions" (Part 200).

2. STATUTORY AUTHORITY

The statutory authority for the promulgation of Part 235 and the attendant revision to Part 200 is found in the New York State Environmental Conservation Law (ECL) Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105.

3. LEGISLATIVE OBJECTIVES

Article 19 of the ECL was enacted to safeguard the air resources of New York from pollution and ensure protection of the public health and welfare, the natural resources of the state, and physical property by integrating industrial development with sound environmental practices. It is the policy of the State to require the use of all available, practical and reasonable methods to prevent and control air pollution in New York. To facilitate this objective, the Legislature granted specific powers and duties to the Department, including the power to adopt and promulgate regulations to prevent, control and prohibit air pollution. The provisions cited above clearly provide the Department with the requisite authority to adopt this regulation.

4. NEEDS AND BENEFITS

New York faces a significant public health challenge from ground-level ozone, which causes health effects ranging from respiratory disease to death. In response to this public health concern, New York has enacted a series of regulations designed to control ozone and its chemical precursors, including VOCs. In an effort to achieve reductions of VOC emissions in the state, New York has promulgated regulations under Part 235 to limit the VOCs emitted by a group of household and commonly used products, collectively known as consumer products.

A. Background

The Department estimates that 164,200 tons of VOCs were released in the state during 2014 from consumer products and architectural and industrial maintenance coatings.¹ It is essential that the Department adopt stringent consumer product emissions limitations to protect human health and the environment. The current version of the consumer products regulations in New York State is based on a 1996 version of regulations effective in California as required by Section 183 of the Clean Air Act. 42 USC 7511b.

In order to reduce VOCs from consumer products in California, the South Coast Air Quality Management District (SCAQMD) adopted a rule in March 2009 to reduce the VOC content of paint thinners and multi-purpose solvents to 300 grams per liter (g/l) effective January 1, 2010 and then to 25 g/l effective January 1, 2011. The California Air Resources Board (CARB) amended its consumer products regulation to limit VOCs in certain product categories to 30 percent VOC by weight, as of December 31, 2010, and to a limit of three percent, by December 31, 2013. CARB's regulation also provided a three-year sell-through period in which noncompliant solvents, produced before the compliance deadline, could be sold.

In order to adopt the California regulations on the east coast, DAR staff led the OTC process to develop a new consumer products model rule, largely based on Suggested Control Measures (SCM) developed by CARB. The final model rule, for use by all OTC states, supports the application of consistent product standards amongst states to address the regional nature in which consumer products are sold and distributed. On

June 3, 2010, the OTC adopted a Resolution wherein member states agreed to pursue, as necessary and appropriate, state-specific rulemakings to update rules in accordance with the 2010 OTC Consumer Products Model Rule. The 2010 OTC Model Rule was revised on May 10, 2012 to include CARB's limits for multi-purpose solvents and paint thinners based on the CARB 2009 Consumer Products Regulatory Amendments. The OTC revised the model rule again on May 21, 2013 with a minor amendment that did not affect emissions calculations.

To adopt the limits in the 2010 OTC Model Rule as amended through 2013, Part 235 must be revised to add new categories and revise others. New categories include: "Artist's Solvent/Thinner," "Paint Thinners and Multi-Purpose Solvents," and "Dual Purpose Air Freshener/Disinfectant." Revised categories include the definitions of "Air Freshener" and "Sanitizer" in order to include a category of "Dual Purpose Air Freshener/Disinfectant," and revising the definition of "Oven Cleaner" to become "Oven or Grill Cleaner." A new definition of "Zinc Rich Primer" is also included in the rule. The Table of Standards (Subpart 235-3) will be updated to conform to the revised definitions and product categories, and to remove obsolete text and references. The revisions will also provide adequate lead time to manufacturers to comply with the rule and will not be applied retroactively.

B. Benefits

Revisions to Part 235 are expected to reduce VOC emissions from products used throughout the state. As a result of these product formulation revisions, the amount of VOC released to the air is expected to be reduced by 5.3 tons per day (approximately 1900 tons per year). Since emissions from consumer products are highest in population centers, the reduction in the New York City metropolitan area, where the ozone standard is exceeded, is expected to be 3.4 tons per day.

5. COSTS

The changes are not expected to have any significant impacts on production costs and the Department does not expect manufacturers to pass on the cost of compliance to consumers in the form of increased retail prices. The new product formulations are already available for sale in the marketplace and the rule should have no adverse impact on consumer costs.

Adoption of this proposal would promote consistency with other states in the northeast and uniformity of product requirements and would help eliminate different versions of the regulatory standards being applied to products in the states in the northeast; thereby reducing the costs and complexities of compliance across markets with different product VOC requirements.

6. LOCAL GOVERNMENT MANDATES

The regulations would not impose any additional mandates on local governments. The products will be distributed in the same manner as they have been, and the responsibility to provide products compliant with the regulation lies upon the manufacturers and distributors of the products. This is not a mandate on local governments pursuant to Executive Order 17.

7. PAPERWORK

The regulations would not impose any paperwork burdens on the regulated community. The products will be distributed in the same manner as they have been, and the responsibility to provide products compliant with the regulation lies upon the manufacturers and distributors of the products. No additional paperwork is required by manufacturers or sellers.

8. DUPLICATION

While there are federal rules for consumer products, enacted September 11, 1998, the provisions of the existing and final regulations create requirements above and beyond the limits in the federal rule in order to address air quality improvement efforts in New York.

9. ALTERNATIVES

DEC considered four alternatives to the rule:

1) No Action. The severity of New York State's air quality problems requires more VOC reductions than this option would provide.

2) New York could adopt some, but not all, of the proposed amendments. Given the regional nature of consumer product sales and distribution, and commitments by the Department to the other OTC states to adopt consistent regulations, this option is preferred.

3) New York could revert to federal emissions standards. The severity of New York State's air quality problems requires more VOC reductions than this option would provide.

4) New York could go further and adopt the current CARB standards, which exceed the consensus limitations developed in the OTC model rule process. This would make New York consistent with only California, and would make it difficult for manufacturers to comply with the regulations in the Northeast. It would also create a difficult enforcement scenario because of the regional nature in which products are sold and distributed.

10. FEDERAL STANDARDS

The EPA adopted national consumer product standards in September 1998. The OTC model rule amendments, which form part of the basis of

the revisions to Part 235, Consumer Products Rule, include limits which are more restrictive than federal standards. These include stricter VOC limits for 14 existing consumer product categories and 3 new categories.

11. COMPLIANCE SCHEDULE

The rule takes effect 30 days after filing with the New York State Department of State. The rule streamlines compliance by establishing a single compliance date for all categories subject to the rule, to be January 1, 2022.

¹ VOC emissions from architectural and industrial maintenance coatings are regulated under Part 205.

Revised Regulatory Flexibility Analysis

The New York State Department of Environmental Conservation (Department) Division of Air Resources (DAR) revised 6 NYCRR Part 235, “Consumer Products” (Part 235), to reduce volatile organic compound (VOC) emissions, improve air quality, and promote regional consistency. The revisions will help the state comply with federal Clean Air Act (CAA) requirements pertaining to attainment and maintenance of the ozone National Ambient Air Quality Standards (NAAQS), and maintain regional product consistency in accordance with a memorandum of understanding (MOU) dated June 3, 2010 among the Ozone Transport Commission (OTC) states¹. The revisions include adding new categories and revising others in order to make the New York regulation consistent with the 2010 OTC model rule as amended through 2013 and regulations adopted by nearby states. Additionally, 6 NYCRR Subpart 235-3, “Standards” (Subpart 235-3) will be updated to conform to the revised definitions and product categories, and to remove obsolete text and references. This proposal will also make attendant changes to 6 NYCRR Part 200, “General Provisions” (Part 200).

1. EFFECT OF RULE

The rule will apply to consumer products consistently throughout the state. It lowers VOC content in various products, including adhesives, deodorant, hair care products, and some automotive care products available at retail outlets throughout the state. Unless a small business or local government manufactures products impacted by the rule or engages in the sale of products that are not in compliance with the rule, these revisions do not apply to small businesses or local governments who merely sell or offer to sell consumer products that are in compliance with the requirements of this rule.

2. COMPLIANCE REQUIREMENTS

There are no additional compliance requirements as a result of these revisions on small businesses or local governments in the State. Unless they engage in the manufacturing of the consumer products regulated, they will not be required to document, report, or keep records on the consumer products impacted by this regulatory revision. Retail outlets will continue to sell consumer products, with slight changes in formulation as required. The formulation changes have already been developed for and are available in California, Connecticut, Delaware, Maryland, and New Hampshire.

3. PROFESSIONAL SERVICES

The compliance date of January 1, 2022 will apply statewide to any person who sells, supplies, offers for sale, or manufactures consumer products for use in New York State. There are no additional requirements for professional services based specifically on whether the entity is a small business or government agency. The rule requires specified consumer products to be formulated, manufactured and sold in compliance with the standards in the regulation and that manufacturers produce compliant products.

4. COMPLIANCE COSTS

The changes are not expected to have any significant impacts on production costs and the Department does not expect manufacturers to pass on the cost of compliance to consumers in the form of increased retail prices. The new product formulations are already available for sale in the marketplace and the rule should have no adverse impact on consumer costs. Any alternative formulations compliant with the regulations typically reduce costs due to the use of less expensive, less complicated and less toxic alternative chemicals.

There are no specific cost impacts for continuing compliance with the regulation for small businesses or local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The economic and technological feasibility of the rule has already been proven for products impacted by the rule. No compliance impacts will be imposed on small businesses or local governments since the rules apply consistently to all areas of the state. The consumer product reformulations have already been made by manufacturers, and products meeting the standards are being sold in California, Connecticut, Delaware, Maryland, and New Hampshire.

6. MINIMIZING ADVERSE IMPACT

The rule is designed to minimize any adverse impacts on local govern-

ments, rural areas, or small businesses by applying consistently to all areas of the state. Manufacturers have developed and made available consumer products that meet the standards in California, Connecticut, Delaware, Maryland, and New Hampshire.

The Department does not anticipate any significant adverse impacts on small businesses or local governments as a result of this rulemaking. Additionally, the Department has already undertaken efforts to minimize any potential impacts by conducting outreach with stakeholders and the Ozone Transport Commission states, and considered all public comments received during the rulemaking process.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The rule is based upon the 2010 OTC model rule as amended through 2013 and developed by the Ozone Transport Commission for adoption by member states. The OTC effort was undertaken to provide public and private interests the opportunity to participate in the development of the model rule in order to ease implementation of the regulations and provide consistent product formulations throughout the region.

Potentially affected entities, including those involved in small businesses and local governments, were given the opportunity to review and comment on the draft rulemaking in accordance with State rulemaking requirements, and all comments received were considered during the development of the requirements.

8. CURE PERIOD OR AMELIORATIVE ACTION

No additional cure period or other opportunity for ameliorative action is included in the revisions to Part 235. This proposal will not result in immediate violations or impositions of penalties for existing facilities. To help reduce impacts on affected sources the rule streamlines compliance by establishing a single compliance date for all categories subject to the rule, to be January 1, 2022.

9. INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

¹ See OTC Website - [http://www.otcair.org/document.asp?Fview=Formal_Actions_for_document_“MOU_adoption_of_new_regional_controls\[1\]\[1\].pdf”](http://www.otcair.org/document.asp?Fview=Formal_Actions_for_document_“MOU_adoption_of_new_regional_controls[1][1].pdf”)

Revised Rural Area Flexibility Analysis

The New York State Department of Environmental Conservation (Department) Division of Air Resources (DAR) revised 6 NYCRR Part 235, “Consumer Products” (Part 235), to reduce volatile organic compound (VOC) emissions, improve air quality, and promote regional consistency. The revisions will help the state comply with federal Clean Air Act (CAA) requirements pertaining to attainment and maintenance of the ozone National Ambient Air Quality Standards (NAAQS), and maintain regional product consistency in accordance with a memorandum of understanding (MOU) dated June 3, 2010 among the Ozone Transport Commission (OTC) states¹. The revisions include adding new categories and revising others in order to make the New York regulation consistent with the 2010 OTC model rule as amended through 2013 and regulations adopted by nearby states. Additionally, 6 NYCRR Subpart 235-3, “Standards” (Subpart 235-3) will be updated to conform to the revised definitions and product categories, and to remove obsolete text and references. This proposal will also make attendant changes to 6 NYCRR Part 200, “General Provisions” (Part 200).

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

The regulation applies statewide, and as such, will apply consistently to all rural areas throughout the state.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

The compliance requirements will apply statewide to any person who sells, supplies, offers for sale, or manufactures consumer products for use in the State of New York. There are no reporting, recordkeeping or other compliance requirements nor any need for professional services based specifically on a person’s or manufacturer’s location in rural areas of the state. The rule requires specified consumer products to be formulated, manufactured and sold in compliance with the standards in the regulation, and that manufacturers produce compliant products. The revisions establish a single compliance date, January 1, 2022, for all categories subject to the rule.

3. COSTS

The Department does not anticipate any capital or annual costs to comply with the rule that are specific to rural areas of the state since product formulations under the regulation will apply to all areas of the state consistently. There are no specific cost impacts for public nor private entities in rural areas of the state.

4. MINIMIZING ADVERSE IMPACT

The rule is designed to minimize any adverse impacts on rural areas by applying consistently to all areas of the state. Manufacturers of consumer

products have developed and marketed products that meet the standards in California, Connecticut, Delaware, Maryland, and New Hampshire.

5. RURAL AREA PARTICIPATION

The Department developed the regulation after the Ozone Transport Commission developed the model rule to be applied to the northeast states. The OTC effort was undertaken to enable public and private interests to participate, to ease implementation of the regulations, and to provide consistent product formulations throughout the region.

Additionally, potentially affected entities in all areas, including rural, were given the opportunity to review and comment on the draft rulemaking in accordance with State rulemaking requirements, and all comments received were considered during the development of the requirements. Because the regulation applies consistently throughout the state, adoption or modification of procedural rules will be consistent throughout the state.

6. INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

¹ See OTC Website - [http://www.otcair.org/document.asp?Fview=Formal Actions for document "MOU_adoption_of_new_regional_controls\[1\]\[1\].pdf"](http://www.otcair.org/document.asp?Fview=Formal%20Actions%20for%20document%20%22MOU_adoption_of_new_regional_controls%5B1%5D.pdf%22)

Revised Job Impact Statement

The New York State Department of Environmental Conservation (Department) Division of Air Resources (DAR) revised 6 NYCRR Part 235, "Consumer Products" (Part 235), to reduce volatile organic compound (VOC) emissions, improve air quality, and promote regional consistency. The revisions will help the State comply with federal Clean Air Act (CAA) requirements pertaining to attainment and maintenance of the ozone National Ambient Air Quality Standards (NAAQS), and maintain regional product consistency in accordance with a memorandum of understanding (MOU) dated June 3, 2010 among the Ozone Transport Commission (OTC) states¹. The revisions include adding new categories and revising others in order to make the New York regulation consistent with the 2010 OTC model rule as amended through 2013 and regulations adopted by nearby states. Additionally, 6 NYCRR Subpart 235-3, "Standards" (Subpart 235-3) will be updated to conform to the revised definitions and product categories, and to remove obsolete text and references. This proposal will also make attendant changes to 6 NYCRR Part 200, "General Provisions" (Part 200).

1. NATURE OF IMPACT

There will be little, if any impact on jobs and employment opportunities in the State. Manufacturers of consumer products have developed and market products that would meet these standards in California, Connecticut, Delaware, Maryland and New Hampshire, where rule limits identical to DEC's rule have already been adopted.

2. CATEGORIES AND NUMBERS AFFECTED

There will be little, if any impact on any specific category of jobs or employment opportunities in the State. Retail outlets will continue to sell consumer products, with slight changes in formulation already developed for and available in California, Connecticut, Delaware, Maryland, and New Hampshire.

3. REGIONS OF ADVERSE IMPACT

The regulation applies statewide, and as such, there will be no disproportionate adverse impact on existing jobs, nor will it disproportionately promote the development of new employment opportunities. Therefore, the Department does not anticipate any region-specific adverse impacts.

4. MINIMIZING ADVERSE IMPACT

The Department does not anticipate any significant adverse impacts on existing jobs nor on the promotion of new employment opportunities as a result of this rulemaking. Additionally, the Department has already undertaken efforts to minimize any potential impacts by conducting outreach with stakeholders and the Ozone Transport Commission states, and reviewed all public comments received during the rulemaking process.

5. SELF-EMPLOYMENT OPPORTUNITIES

The adoption of revised Part 235 is not expected to result in negative impacts to self-employment opportunities.

6. INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

¹ See OTC Website - [http://www.otcair.org/document.asp?Fview=Formal Actions for document "MOU_adoption_of_new_regional_controls\[1\]\[1\].pdf"](http://www.otcair.org/document.asp?Fview=Formal%20Actions%20for%20document%20%22MOU_adoption_of_new_regional_controls%5B1%5D.pdf%22)

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2024, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

General:

Comment 1: Supports the adoption of regionally consistent consumer products regulations based on the OTC Model Rule. (Commenter 1)

Comment 2: Supports the proposed new or revised VOC limits. (Commenter 1)

Response to Comments 1 and 2: The Department thanks you for your support of this rulemaking.

Comment 3: The Department is not focusing on the largest emission sources and should pay attention to other emission sectors. (Commenter 2)

Response to Comment 3: The Department is addressing numerous emission sources in several ways in order to reduce ozone, including by regulating products that contain ozone precursor pollutant emissions. Difficulty in reaching the ozone standard requires that all sectors be addressed, and that reductions be obtained from all sources of volatile organic compounds, including consumer products. Recent research by the National Oceanic and Atmospheric Administration, in 2018, has indicated that the use of volatile chemical products (VCPs) – including pesticides, coatings, printing inks, adhesives, cleaning agents, and personal care products – now constitutes half of VOC emissions in industrialized cities.

Effective Date:

Comment 4: There is insufficient time from the publication date of the final rule and the January 1, 2021 effective date of the regulation, considering the need for product manufacturers and distributors to comply with the regulation. (Commenter 1)

Response to Comment 4: The Department based these Part 235 revisions on a model rule developed cooperatively with the Ozone Transport Commission. While products regulated in Part 235 are currently available for sale in California and various east coast states, the Department recognizes that manufacturers and distributors may still require additional time in order to address distribution issues and provide compliant products to retail outlets. The Department is revising the rule to change the compliance date to January 1, 2022.

Technical Corrections:

Comment 5: The Department should make the following technical correction to Section 235-3.1(e) in the final regulation – "(e) 'Products registered under FIFRA'. For those consumer products that are registered under the Federal Insecticide, ... in this Subpart is January 1, 2011 2022." (Commenter 1)

Response to Comment 5: The Department has made this technical correction. Because the compliance deadline has been changed from January 1, 2021 to January 1, 2022 (see Response to comment 4), this date has also been changed (to January 1, 2023). The commenter correctly pointed out that the date for products registered under FIFRA should be one year beyond the general compliance deadline.

Sell Through of Products:

Comment 6: The Department should revise Section 235-3.1(o) to provide a reasonable sell-through limitation for the five product categories that are subject to new regulatory requirements." Commenter recommends the following revisions to Section 235-3.1(o)(1) in the final regulation:

"(1) Effective January 1, 2021, no person shall sell, supply, ...or grill cleaner manufactured on or after January 1, 2021, that contains..." (Commenter 1)

Response to Comment 6: After reviewing comments and hearing legitimate concerns from manufacturers, the Department is revising the rule to include a sell through provision to allow manufacturers to sell existing stock of products that were manufactured before the compliance date (also revised, now January, 1, 2022). Also, see response to Comment 4.

Commenter #1 – HCPA – The Household and Commercial Products Association

Commenter #2 - Jim Murray adkmurray@yahoo.com

NOTICE OF ADOPTION

Regulations Governing Commercial Fishing for Tautog (Blackfish)

I.D. No. ENV-12-20-00001-A

Filing No. 15

Filing Date: 2021-01-12

Effective Date: 2021-01-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0105 and 13-0340-d

Subject: Regulations governing commercial fishing for Tautog (blackfish).

Purpose: To revise regulations concerning the commercial harvest of Tautog in New York State.

Text of final rule: Existing paragraph 40.1(a)(7) is repealed.

A new paragraph 40.1(a)(7) is added to read as follows: