

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. R02-OAR-2004-NY-0001; FRL-7852-5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a request from New York to revise its State Implementation Plan (SIP) for ozone to incorporate revisions to subpart 227-2 "Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x)" of Part 227 "Stationary Combustion Installations" of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6NYCRR). The revision relates to the control of oxides of nitrogen emissions from stationary industrial sources. This SIP revision consists of a control measure needed to meet the shortfall in emissions reduction identified by EPA in New York's one-hour ozone attainment demonstration SIP.

The intended effect of this rule is to approve a control strategy which will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone required by the Clean Air Act.

EFFECTIVE DATE: This rule will be effective February 14, 2005.

ADDRESSES: Copies of the state submittal(s) 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, 625 Broadway, 2nd Floor, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT:

Anthony (Ted) Gardella (Gardella.Anthony@epa.gov) for specific questions on New York's NO_x RACT SIP revision or Kirk J. Wieber (Wieber.Kirk@epa.gov) for specific questions on New York's ozone attainment demonstration; Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3892 or (212) 637-3381, respectively.

SUPPLEMENTARY INFORMATION:

- I. What Action Is EPA Taking Today?
- II. What Comments Were Received and How Has EPA Responded to Them?
- III. What Role Does This Rule Play in the Ozone SIP?
- IV. What Are EPA's Conclusions?
- V. Administrative Correction to Section 52.1679 EPA-Approved New York State Regulations
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I. What Action Is EPA Taking Today?

EPA is approving a revision to New York's ground level ozone State Implementation Plan (SIP) which New York submitted on February 18, 2004. The SIP revision includes amendments to the following two regulations: Subpart 227-2 entitled "Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x)" of part 227 entitled, "Stationary Combustion Installation;" and subpart 201-3 entitled, "Exemptions and Trivial Activities," of part 201 entitled, "Permits and Registration," all of which are part of title 6 of the New York Codes of Rules and Regulations. These amended rules were adopted on January 9, 2004. New York submitted the regulations in order to strengthen its one-hour ozone SIP. New York amended subpart 227-2 for the purpose of achieving additional reductions of NO_x emissions in response to emission reduction shortfalls identified by EPA (64 FR 70364; December 16, 1999) for attainment of New York's one-hour ozone standard. New York amended subpart 201-3 to be consistent with amendments to subpart 227-2. EPA has determined that New York's submittal is fully approvable as a SIP strengthening measure for New York's one-hour ground level ozone SIP. The reader is referred to the proposed rulemaking (69 FR 59839; October 6, 2004) for additional details.

II. What Comments Were Received and How Has EPA Responded to Them?

The public comment period on EPA's proposed approval of New York's February 18, 2004 SIP submittal ended on November 5, 2004. EPA received no comments on the proposed approval action.

III. What Role Does This Rule Play in the Ozone SIP?

When EPA evaluated New York's one-hour ozone attainment demonstrations, EPA determined that additional emission reductions were needed for the State's severe nonattainment area in order for the State to attain the one-hour ozone standard with sufficient surety (64 FR 70364; December 16, 1999). EPA provided that the states in the Ozone Transport Region could achieve these

emission reductions through regional control programs. New York decided to participate with the other states in the Northeast in an Ozone Transport Commission (OTC) regulatory development effort which lead to six model control measures. The New York rule, which was adopted by the State on January 9, 2004, incorporates a portion of the OTC model rule for additional NO_x control measures. The emission reductions from this control measure will provide additional emission reductions towards attaining the one-hour ozone standard and will be important in attaining the 8-hour ozone standard.

IV. What Are EPA's Conclusions?

EPA has evaluated New York's submittal for consistency with the Clean Air Act, EPA regulations, and EPA policy. The proposed new control measures will strengthen the SIP by providing additional NO_x emission reductions. Accordingly, EPA is approving the revision to subpart 227-2, as adopted on January 9, 2004, into New York's ozone SIP. Because of previous changes to subpart 201-3 independent of today's rulemaking, EPA will take action on the revisions to subpart 201-3, as adopted by New York on January 9, 2004, at a later date.

In revising subpart 227-2, New York deleted the final compliance date applicable to sources because the date had passed, and sources are now expected to be in compliance. EPA believes that the deletion makes it less clear to sources obligated to comply with the May 31, 1995 compliance date in the Clean Air Act and in the previously approved SIP that they are obliged to have complied by that date. Nevertheless, deletion of the date does not eliminate the effective date established by the prior SIP approved rule or the Clean Air Act and thus does not impact on the State and EPA's authority to enforce. In the event EPA needs to take enforcement action, it will base penalties for noncompliance on the final compliance date in effect at the time of the violation.

V. Administrative Correction to Section 52.1679 EPA-Approved New York State Regulations

New York submitted part 215 "Open Fires" (state effective date June 16, 1972) as part of the SIP and EPA incorporated it into the SIP (see 40 CFR 52.1670(c)(6)). In a subsequent SIP revision dated August 10, 1979 the State submitted a request to incorporate additional regulations and include current versions of the regulations

previously included in the SIP. One of these regulations was part 215.

In EPA's proposed approval of the August 10, 1979 SIP revision (46 FR 19829; April 1, 1981) EPA stated that part 215 had not been changed from the version that was incorporated into the SIP and that no further action was necessary. EPA finalized that rulemaking on November 12, 1981 (46 FR 55690) and created a table of approved regulations in section 52.1679 "EPA-approved New York State regulation." However, part 215 was inadvertently not included in the section 52.1679 table.

As part of today's rulemaking, EPA is correcting this omission and is adding part 215 to the table of approved New York regulations.

VI. 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 (Pub. L. 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). This action 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 March 14, 2005. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 13, 2004.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

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

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart HH—New York

■ 2. Section 52.1670 is amended by adding new paragraph (c)(106) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

(106) Revisions to the State Implementation Plan submitted on February 18, 2004, by the New York State Department of Environmental Conservation which consists of control measures that will achieve reductions in NO_x emissions from stationary combustion sources that will help achieve attainment of the national ambient air quality standard for ozone.

(i) Incorporation by reference:

(A) Regulation subpart 227-2 "Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x)" of part 227 "Stationary Combustion Installations" of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6NYCRR), filed on January 12, 2004, and effective on February 11, 2004.

■ 3. Section 52.1679 is amended by adding a new entry for part 215 under title 6 and revising the entry for part 227, subpart 227-2 under Title 6 as follows:

§ 52.1679 EPA-approved New York State regulations.

| New York State regulation | State effective date | EPA approved date | Comments |
|---|----------------------|---|----------|
| Title 6: | | | |
| * Part 215, Open Fires | * 6/16/72 | * 9/22/72, 37 FR 19814 | * |
| * Subpart 227-2, Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO _x). | * 2/11/04 | * 1/13/05 [insert publication and FR page citation of this notice] | * |

[FR Doc. 05-712 Filed 1-12-05; 8:45 am]
BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98-67, CG Docket No. 03-123; DA 04-3709]

Expiration of Waiver of Three-Way Calling Requirement for Providers of Telecommunications Relay Services

AGENCY: Federal Communications Commission.

ACTION: Expiration of waiver; request for comment.

SUMMARY: In this document, the Commission announces that the one-year waiver of the requirement that telecommunications relay service (TRS) providers (including providers of captioned telephone service) offer three-way calling will expire on February 25, 2005. This document seeks comment on whether TRS providers will be able to offer this feature as of that date, or whether it is necessary to extend this waiver. This document also seek comment on whether, instead of a waiver, the requirement might be modified or clarified, and, if so, how.

DATES: One-year waiver expires February 25, 2005. Interested parties may file comments in this proceeding on or before December 17, 2004. Reply comments may be filed on or before December 30, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418-2247 (voice), (202) 418-7898 (TTY), or e-mail at Dana.Jackson@fcc.gov.

SUPPLEMENTARY INFORMATION: On July 17, 2003, the Commission released a *Second Report and Order, Order on*

Reconsideration (Second Improved TRS Order), published at 68 FR 50973, August 25, 2003, in CC Docket No. 98-67; FCC 03-112. In the *Second Improved TRS Order*, the Commission required that TRS providers offer three-way calling as a standard feature of TRS. This is a summary of the Commission's document DA 04-3709, released November 30, 2004. When filing comments on expiration of waiver of three-way calling requirement for providers of TRS, please reference CC Docket No. 98-67 and CG Docket No. 03-123. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comment and reply comment to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comment and reply comment by Internet e-mail. To get filing instructions, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by electronic

media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-B204 Washington, DC 20554. Parties who choose to file by paper should also submit their comment and reply comment on diskette. These diskettes should be submitted, along with three paper copies, to: Dana Jackson, Consumer & Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room CY-A626, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98-67 and CG Docket No. 03-123, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label