

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- 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);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 1, 2013.

**Judith A. Enck,**

*Regional Administrator, Region 2.*

[FR Doc. 2013-08238 Filed 4-9-13; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2013-0180, FRL-9800-3]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan (SIP) for ozone concerning the control of oxides of nitrogen. The proposed SIP revision consists of amendments to Title 6 of the New York Codes, Rules and Regulations Part 200, "General Provisions," Part 212, "General Process Emission Sources," Part 220, "Portland Cement Plants and Glass Plants," and Subpart 227-2, "Reasonably Available Control Technology (RACT) For Major Facilities of Oxides of Nitrogen (NOx)." The intended effect of this action is to approve control strategies, required by the Clean Air Act, which will result in emission reductions that will help attain and maintain the national ambient air quality standards for ozone.

**DATES:** Comments must be received on or before May 10, 2013.

**ADDRESSES:** Submit your comments, identified by Docket Number EPA-R02-OAR-2013-0180, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.

- *Email:* [Ruvo.Richard@epa.gov](mailto:Ruvo.Richard@epa.gov).

- *Fax:* 212-637-3901.

- *Mail:* Richard Ruvo, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

- *Hand Delivery:* Richard Ruvo, acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. 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 Docket No. EPA-R02-OAR-2013-0180. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at

[www.regulations.gov](http://www.regulations.gov), 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 [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, 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 email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your email 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 or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kirk J. Wieber ([wieber.kirk@epa.gov](mailto:wieber.kirk@epa.gov)), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3381.

**SUPPLEMENTARY INFORMATION:**

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### I. What is required by the Clean Air Act (Act) and how does it apply to New York?

#### A. What is the history and time frame for State Implementation Plan (SIP) submissions?

In 1997, EPA revised the health-based national ambient air quality standards (NAAQS or standard) for ozone, setting it at 0.08 parts per million averaged over an 8-hour period. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma. On April 30, 2004 (69 FR 23858), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. The three 8-hour ozone moderate nonattainment areas located in New

York State are: the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area; the Poughkeepsie nonattainment area; and the Jefferson County nonattainment area. The New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester and Rockland. This is collectively referred to as the New York City Metropolitan Area or NYMA. The Poughkeepsie nonattainment area is composed of Dutchess, Orange and Putnam counties.

The April 30, 2004 designations triggered the Act's requirements under section 182(b) for moderate nonattainment areas, including a requirement to submit a demonstration of attainment. EPA notes that on December 7, 2009 (74 FR 63993), EPA determined that the Poughkeepsie area attained the 8-hour ozone standard and on March 25, 2008 (73 FR 15672) EPA determined that Jefferson County attained the 8-hour ozone standard. On June 18, 2012 (77 FR 36163) EPA determined that the New York City Metropolitan Area attained the 8-hour ozone standard.

#### B. What are the moderate area requirements?

To assist states in meeting the Act's requirements for ozone, EPA released an 8-hour ozone implementation rule in two phases. EPA's Phase 1 8-hour ozone implementation rule, published on April 30, 2004 (69 FR 23951) and referred to as the Phase 1 Rule, specifies that states must submit these attainment demonstrations to EPA by no later than three years from the effective date of designation—that is, submit them by June 15, 2007.<sup>1</sup>

On November 29, 2005, EPA published Phase 2 of the 8-hour ozone implementation rule (70 FR 71612), referred to as the Phase 2 Rule, which addressed the control and state plan obligations that apply to areas designated nonattainment for the 8-hour NAAQS. Among other things, the Phase

1 and Phase 2 Rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. For such areas, reasonably available control technology (RACT) plans were due by September 2006 (40 CFR 51.912(a)(2)).

Both the Phase 1 and Phase 2 rules require that modeling and attainment demonstrations, reasonable further progress plans, reasonably available control measure (RACM) analysis, projection year emission inventories, motor vehicle emissions budgets and contingency measures were all due by June 15, 2007 (40 CFR 51.908(a)).

On July 23, 2010 (75 FR 43066), EPA conditionally approved New York's statewide RACT and RACM SIP revision. EPA conditionally approved the RACT and RACM analyses for the 1997 8-hour ozone NAAQS based on New York's commitment to submit adopted RACT/RACM rules for several source categories by August 31, 2010. On May 28, 2010 (75 FR 29897) and March 8, 2012 (77 FR 13974), EPA approved five New York VOC RACT/RACM rules that New York committed to adopt pursuant to EPA's July 23, 2010 conditional approval. The three NO<sub>x</sub> RACT rules that are the subject of this proposed action are the only remaining rules pursuant to EPA's July 23, 2010 conditional approval and New York's commitment to adopt additional RACT/RACM rules.

### II. What was included in New York's submittals?

On August 19, 2010 and December 15, 2010, the New York State Department of Environmental Conservation (NYSDEC), submitted to EPA proposed revisions to the SIP, which included State adopted revisions to four regulations contained in Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 200, "General Provisions," Part 212, "General Process Emission Sources," Part 220, "Portland Cement Plants and Glass Plants," and Part 227–2, "Reasonably Available Control Technology (RACT) For Major Facilities of Oxides of Nitrogen (NO<sub>x</sub>)," with effective dates of September 30, 2010, July 11, 2010 and July 8, 2010, respectively. These revisions are applicable statewide and will therefore provide oxides of nitrogen (NO<sub>x</sub>) emission reductions statewide and will address, in part, attainment of the 1997 8-hour ozone standard in the NYMA and the RACT and RACM requirements.

<sup>1</sup> On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit (the Court) vacated the Phase 1 Rule. *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). Subsequently, in *South Coast Air Quality Management Dist. v. EPA*, 489 F.3d 1295 (D.C. Cir. 2007), in response to several petitions for rehearing, the Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. The court upheld the portions of the Phase 1 Rule relating to EPA's classification system under subpart 2. The portions of the rule that were vacated do not affect this proposed action.

### III. What is EPA's evaluation of Part 212, "General Process Emission Sources"?

#### A. Background

The NYSDEC revised 6 NYCRR Part 212, by adding section 212.12, "Hot mix asphalt production plants," to include control requirements for hot mix asphalt production plants. These control requirements will be specifically aimed at reducing NO<sub>x</sub> emissions resulting from combustion during the aggregate drying and heating process.

With the exception of section 212.12, NO<sub>x</sub> requirements under Part 212 affect only major facilities. Major facilities or major sources are those that have a potential to emit NO<sub>x</sub> emissions in excess of 100 tons/yr (upstate) and 25 tons/yr (downstate or in the NYMA.) Most, if not all, hot mix asphalt plants in New York State are minor sources. These new requirements will therefore be targeted primarily at minor sources. Approximately 200 hot mix asphalt production plants exist throughout the State, though not all are currently in service. While some asphalt production plants have consolidated under common ownership, many of these could be considered small businesses. On February 28, 2013, New York submitted a letter to EPA certifying that there are no "major source" asphalt production plants located in New York State.

#### B. What are the new requirements of Part 212?

The new compliance requirements under section 212.12 apply uniformly statewide. Under the proposed requirements, owners and operators of hot mix asphalt production plants must comply with NO<sub>x</sub> reduction practices and the possible application of low NO<sub>x</sub> burner control technology. Annual burner tune-ups will be required in order to increase the efficiency of the dryer burner. Plants will also be required to implement methods of reducing the moisture content in their aggregate stockpiles, which will result in less drying time and therefore will require less fuel to be burned and less NO<sub>x</sub> emissions.

The owners or operators of plants will also be required to analyze the economic feasibility of installing a low NO<sub>x</sub> burner<sup>2</sup> when their current burner is due to be replaced (though no later than 2020). In instances where it proves feasible, the installation of a low NO<sub>x</sub>

burner will be required. The cost effectiveness calculation contained in New York's "Air Guide 20 Economic and Technical Analysis for Reasonably Available Control Technology" will be utilized, with a threshold that represents the dollar per ton value of RACT at the time the analysis is done, in order to determine economic feasibility.

#### C. What is EPA's evaluation?

##### NO<sub>x</sub> Emission Control Requirements and Compliance Dates

Section 212.12 requires facilities to do the following for reducing NO<sub>x</sub> emissions; (1) Perform a tune-up on the dryer burner on an annual basis, (2) submit a plan which details the introduction or continuation of methods by which to reduce the moisture content of the aggregate stockpile(s), and (3) analyze the economic feasibility of installing a low NO<sub>x</sub> burner when it comes time for their current burner to be replaced. New York requires that "Air Guide 20 Economic and Technical Analysis for Reasonably Available Control Technology" will be utilized, with a threshold that represents the dollar per ton value of RACT at the time the analysis is done, in order to determine economic feasibility.

New York amended Part 212 by including new provisions applicable to asphalt production plants that will result in additional reductions in NO<sub>x</sub> emissions. Emission reductions required by sections 182(b)(2) and 172(c)(1) of the Act that are used to fulfill in the 1997 ozone SIP, are required for all existing "major sources," see section 182(b)(1)(A)(ii)(II) of the Act. As discussed previously, New York's section 212.12 applies to hot mix asphalt production plants, most which are minor sources. As noted in New York's February 28, 2013 letter, there are no existing major sources of hot mix asphalt production. Therefore, EPA proposes to determine the emission reductions resulting from section 212.12 represent additional reductions in NO<sub>x</sub> emissions towards attaining and maintaining the ozone standard.

Part 212 contains the required elements for a federally enforceable rule: emission control requirements, compliance procedures and test methods, compliance dates and record keeping provisions. Therefore, EPA is proposing to approve the revisions to Part 212.

### IV. What is EPA's evaluation of Part 220, "Portland Cement Plants and Glass Plants"?

#### A. Background

The NYSDEC revised 6 NYCRR Part 220, which is divided into two subparts: 220-1 for portland cement plants; and 220-2 for glass manufacturing plants. In addition to other requirements, the existing regulation imposed RACT requirements on NO<sub>x</sub> emissions from portland cement kilns. The NYSDEC revised Part 220 to require updated NO<sub>x</sub> RACT for cement kilns at portland cement plants, and to require NO<sub>x</sub> RACT for glass furnaces at glass plants. The revisions will apply statewide to major facilities only. Major facilities are those that have a potential to emit NO<sub>x</sub> emissions that exceed 100 tons/yr (upstate) and 25 tons/yr (downstate).

The NYSDEC is taking a RACT approach that requires a facility specific analysis. The plant owner or operator will be required to perform a facility specific RACT analysis for emissions of NO<sub>x</sub> that includes proposed NO<sub>x</sub> RACT emission limit(s), identifies the procedures and monitoring equipment to be used to demonstrate compliance with the proposed NO<sub>x</sub> RACT emission limit(s), and includes a schedule for equipment installation. The RACT analysis will be submitted to the NYSDEC for review and approval and subsequently submitted to EPA as a proposed revision to the SIP.

#### B. What are the new requirements of Part 220?

The revised Subpart 220-1 revisions include the removal of a definition, the addition of several new definitions, and revisions to the RACT requirements for NO<sub>x</sub> emissions. Section 220.1 will become section 220-1.1 and will be revised to remove the definition of "RACT" and "Upset Condition." Also, the revisions will add definitions for clinker, portland cement kiln, and portland cement plant. Sections 220.2 through 220.5 will become sections 220-1.2 through 220-1.5. These sections contain existing requirements for particulate emissions from existing, new, and modified kilns and clinker coolers, opacity limits for portland cement processes, and particulate emissions from dust dumps.

Section 220.6 will become section 220-1.6 and the existing NO<sub>x</sub> RACT requirements will be replaced with new NO<sub>x</sub> RACT requirements. The revisions require a portland cement kiln owner or operator to perform a facility specific RACT analysis for emissions of NO<sub>x</sub> from the kiln that includes proposed RACT emission limit(s), identifies the

<sup>2</sup> As defined in Subpart 212.1, "A burner designed to reduce flame turbulence by the mixing of fuel and air and by establishing fuel-rich zones for initial combustion, thereby reducing the formation of nitrogen oxides."

procedures and monitoring equipment to be used to demonstrate compliance with the proposed RACT emission limit(s), and includes a schedule for equipment installation. The RACT analysis was to be submitted to the NYSDEC by December 1, 2010. RACT, as approved by the NYSDEC, must be implemented by July 1, 2012. Approved RACT determinations will be submitted by the NYSDEC to the EPA for approval as separate SIP revisions. The proposed revisions include a kiln shut down option. The owner or operator of a portland cement kiln may opt to comply with the RACT requirements by shutting down the kiln. An owner or operator choosing this option shall submit an application for a federally enforceable permit modification by December 1, 2010 wherein the owner or operator commits to permanently shut down the furnace by July 1, 2012.

Section 220.8 will become section 220-1.7 and will be revised to require NO<sub>x</sub> emissions from portland cement kilns to be continuously monitored. The proposed revisions include specific continuous emissions monitoring, reporting, and recordkeeping requirements.

Proposed Subpart 220-2 is new. This subpart will require NO<sub>x</sub> RACT for glass furnaces at glass plants. The requirements of this Subpart apply to any glass plant that is a major facility of NO<sub>x</sub> emissions. Definitions of glass melting furnace, glass plants, and glass produced or glass production are included in section 220-2.2.

Section 220-2.3 contains the NO<sub>x</sub> RACT requirements. The revisions require a glass melting furnace owner or operator to perform a facility specific RACT analysis for emissions of NO<sub>x</sub> from the furnace that includes proposed RACT emission limit(s), identifies the procedures and monitoring equipment to be used to demonstrate compliance with the RACT emission limit(s), and includes a schedule for equipment installation. The RACT analysis will be submitted to the NYSDEC by December 1, 2010. RACT, as approved by the NYSDEC, must be implemented by July 1, 2012. Approved RACT determinations will be submitted by the NYSDEC to the EPA for approval as separate SIP revisions. The proposed revisions include a glass melting furnace shut down option. The owner or operator of a glass melting furnace may opt to comply with the RACT requirements by shutting down the furnace. An owner or operator choosing this option shall submit an application for a federally enforceable permit modification by December 1, 2010 wherein the owner or operator commits

to permanently shut down the furnace by July 1, 2012.

The section 220-2.4 revisions require NO<sub>x</sub> emissions from glass melting furnaces to be continuously monitored. The revisions include specific continuous emissions monitoring, reporting, and recordkeeping requirements.

### *C. What is EPA's evaluation?*

#### **Subpart 220-1 Portland Cement Plants**

It is EPA's understanding that there are three portland cement plants located in New York State that are subject to the RACT provisions of subpart 220-1. These three facilities are also subject to New York's regional haze plan's best available retrofit technologies (BART) provisions pursuant to 6 NYCRR Part 249.

Of the three cement plants, EPA has been informed that one of the facilities (Holcim) will be shutting down operations and surrendering the operating permit for the kiln. Another facility (Lafarge) will be modernizing the existing plant by replacing the two existing long wet kilns with a new short dry kiln and pre-heater pre-calciner tower. The third facility (LeHigh) concluded that SNCR technology is cost effective (\$1,145/ton NO<sub>x</sub> removed) and will therefore be installing an SNCR. On August 28, 2012 (77 FR 51915), EPA approved these scenarios for each facility as BART determinations pursuant to Part 249. Although EPA believes that the BART determinations approved for these facilities would also constitute RACT, New York is obligated to submit the RACT determinations to EPA as SIP revisions in order to satisfy the subpart 220-1.6(b)(4) RACT requirement and sections 172(c)(1) and 182(b) of the Act.

According to EPA's November 7, 1996 policy memo, entitled "Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirement and Certain NO<sub>x</sub> RACT Requirements," EPA may fully approve VOC and NO<sub>x</sub> RACT regulations provided: (1) The state has submitted a generic rule, and now believes that it has submitted to EPA all the source-specific rules and has submitted a negative declaration that to its best knowledge, there are no remaining unregulated sources, or (2) the generic rule covers only a limited number of sources, with emissions, in the aggregate, that are determined to be de-minimis. In a letter dated February 28, 2013 to EPA, New York commits to submit the applicable single source NO<sub>x</sub> RACT determinations to EPA by December 1, 2013.

EPA evaluated the provisions of subpart 220-1 for consistency with the Act, EPA regulations, and EPA policy and proposes to conditionally approve them based on New York submitting the individual single source RACT determinations to EPA by December 1, 2013.

#### **Subpart 220-2 Glass Plants**

It is EPA's understanding that there are four glass plants located in New York State. Subpart 220-2 does not identify a specific control strategy or emission limit as RACT for these facilities and requires individual source specific RACT determinations. To date, EPA has not received any of those source specific RACT determinations. However, in a letter dated February 28, 2013 to EPA, New York commits to submit the applicable single source NO<sub>x</sub> RACT determinations to EPA by December 1, 2013.

EPA evaluated the provisions of subpart 220-2 for consistency with the Act, EPA regulations, and EPA policy (see EPA's RACT policy memo referenced above) and proposes to conditionally approve them based on New York submitting the individual single source RACT determinations to EPA by December 1, 2013.

### **V. What is EPA's evaluation of Part 227-2, "Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NO<sub>x</sub>)"?**

#### *A. Background*

New York adopted revisions to Subpart 227-2 for the purpose of imposing more stringent emission limits on major stationary sources of NO<sub>x</sub> that contribute to local and regional nonattainment of the 1997 and 2008 ozone standards. The revisions to Subpart 227-2 essentially entail increasing the stringency of emissions limits for six of the source categories and lowering of the size thresholds for two categories of sources. There are also two revisions that will allow subject sources increased flexibility in achieving compliance.

#### *B. What are the new requirements of Part 227-2?*

The Subpart 227-2 revisions include the removal of several definitions (to be relocated to Part 200) and revision of other definitions, a change in the application and permitting requirements, a change in emission limits for most boiler categories, a requirement to submit a new RACT proposal for combined cycle combustion turbines, and revisions to the compliance options.

Section 227–2.2 was revised to remove the definitions of boiler, combined cycle combustion turbine, combustion turbine, continuous emissions monitoring system (CEMS) certification protocol, emergency power generating stationary internal combustion engine, preliminary continuous emissions monitoring system plan, simple cycle combustion turbine, and very large boiler. These definitions will be moved to 6 NYCRR Part 200 (preliminary continuous emissions monitoring system plan will be changed to continuous emissions monitoring system plan), as stated above. Also, the revisions will modify the terms mid-size boiler and small boiler. A mid-size boiler will now be defined as “a boiler with a maximum heat input capacity greater than 25 million Btu per hour and equal to or less than 100 million Btu per hour.” A small boiler will now be defined as “a boiler with a maximum heat input capacity equal to or greater than one million Btu per hour and equal to or less than 25 million Btu per hour.”

Section 227–2.3 was revised to specifically require that subject facilities must submit an application for a Title V permit or permit modification (depending on the current facility status). The requirement to submit a compliance plan was removed since this information is now included in the facility’s permit application.

Section 227–2.4 was revised to change the presumptive RACT emission limits for very large, large, and mid-size boilers. Combined cycle turbines will be required to perform a case-by-case RACT analysis. Also, the revisions will remove the 500-hour non-ozone season presumptive emission limit exemption for simple cycle combustion turbines.

Section 227–2.5 was revised to include a shutdown option for any subject emission source. The intent to shut down an emission source must be recorded as part of a permit modification prior to January 1, 2012, wherein the owner or operator commits to permanently shut down the emission source prior to December 31, 2014. Section 227–2.5 also allows for additional compliance flexibility via applying for a system averaging plan.

### C. What is EPA’s evaluation?

#### NO<sub>x</sub> Emission Rates

New York has revised section 227–2.4 (Control requirements) requiring stricter NO<sub>x</sub> emission limits on three boiler categories, requiring owners of combined cycle combustion turbines to submit a RACT proposal that the State expects will result in additional NO<sub>x</sub>

emission reductions, as well as other revisions that are expected to lower NO<sub>x</sub> emissions. New York expects that when the stricter control requirements are implemented by the July 1, 2014 compliance date, actual NO<sub>x</sub> emissions in the State will be reduced by 28,796 tons per year or a daily reduction of 78.9 tons from 2007 levels. The following summarizes the revised control requirements at section 227–2.4 that are expected to result in NO<sub>x</sub> reductions:

- For very large boilers, presumptive NO<sub>x</sub> emission limits are lowered to the range of 0.08 to 0.20 pounds per million BTU (lb/mmBTU), depending upon the type fuel and boiler configuration. The new limits represent NO<sub>x</sub> reductions in the range of 40% to 88%.

- For large boilers, presumptive NO<sub>x</sub> emission limits are lowered to the range of 0.06 to 0.20 lb/mmBTU which equates to NO<sub>x</sub> reductions in the range of 50% to 73.3%.

- For mid-size boilers, presumptive NO<sub>x</sub> emissions are lowered to the range of 0.05 to 0.20 lb/mmBTU which equates to NO<sub>x</sub> reductions in the range of 33% to 50%.

- For small boilers, the upper range of this boiler category is lowered from 50 mmBTU/hr to 25 mmBTU/hr thereby requiring boilers in the range greater than 25 mmBTU/hr up to 50 mmBTU/hr to be reclassified as mid-size boilers thereby requiring these boilers to meet the presumptive emission limits for mid-size boilers. Currently these small boilers only need to conduct an annual tune-up. New York’s revised definitions of the terms “Small boiler” and “Mid-size boiler” are found at sections 227–2.2(b)(8) and 227–2.2(b)(4), respectively, and these revised definitions are acceptable to EPA.

- For small size boilers, the lower limit of this boiler category was 20 mmBTU/hr (10 mmBTU/hr for coal and residual oil-fired sources in the severe ozone nonattainment area) but is now equal to or greater than one mmBTU/hr. Therefore, the additional boilers will need to comply with the section 227–2.4(d) requirement to conduct an annual tune-up.

- For all combined cycle combustion turbines that operate after July 1, 2014, owners or operators must submit a RACT proposal to NYSDEC for approval. 6 NYCRR 227–2.4(e)(3). The State’s approved RACT plan would be submitted to EPA for approval as a SIP revision in accordance with section 227–2.3(c).

- New York removed the presumptive emission limit exemption for peaking combustion turbines that operate less than 500 hours during the non-ozone season. These sources must now comply

annually with the control requirements at section 227–2.4(e).

- Small combustion turbines and small stationary internal combustion engines are now required to comply with the section 227–2.4(d) requirement to conduct an annual tune-up. New York defines the terms “Small combustion turbine” and “Small stationary internal combustion engine” at sections 227–2.2(b)(9) and (10), respectively, and these new definitions are acceptable to EPA.

EPA believes that the new presumptive emission limits and other control requirements will result in additional NO<sub>x</sub> reductions throughout the State thereby strengthening New York’s ozone SIP and will help the State attain and maintain the 1997 ozone standard and help achieve attainment of the 2008 8-hour ozone standard.

#### Compliance Dates and Flexibility

There are two revisions to Part 227–2 that will allow subject sources increased flexibility in achieving compliance—one allows different owners to engage in a systems averaging plan and the second allows a permanent shutdown by a date certain as a compliance option.

#### Systems Averaging Plan

New York revised the definition of “system” at section 227–2.2(b)(12), as used in the term “system averaging plan” in subpart 227–2.5(b), to read as “a combination of operating emission sources that are located within the same ozone nonattainment area. A system may consist of multiple emission sources at multiple facilities having different owners and/or operators.” New York verbally confirmed to EPA that the detailed procedures for determining compliance with the averaging plan are included in title V permits of those facilities that choose to make use of this option. In addition, New York’s system averaging plan requires that “every owner or operator of an emission source participating in the system averaging plan is liable for any and all violations of the provisions of this Subpart [i.e., subpart 227–2] by any owner or operator of any emission source participating in the system averaging plan.” 6 NYCRR 227–2.5(b)(4). New York’s averaging provision, 227–2.5(b)(2) further restricts the plan by only allowing averaging of facilities within the “severe ozone nonattainment area” but not with facilities inside and outside the nonattainment area. Although EPA has not classified any 8-hour ozone nonattainment areas in New York as severe, New York retained the term “severe ozone nonattainment area” to

maintain consistency with existing SIP approved regulations and “anti-backsliding” provisions of the Act. These affected counties are the same counties defined by EPA for New York’s marginal 2008 8-hour ozone nonattainment area for the New York City Metropolitan area and include the same counties now being maintained for the 1997 8-hour moderate ozone New York City Metropolitan area. Since New York avoids potential confusion by defining the affected counties in the “severe nonattainment area,” this is acceptable to EPA.

#### Shutdown of an Emissions Source

New York provides owners/operators with a new compliance option at section 227–2.5(d) that allows them to comply with the State’s NO<sub>x</sub> RACT requirements by shutting down an emission source by a date certain. New York requires that, “The intent to shut down must be recorded as part of a federally enforceable permit modification prior to January 1, 2012, wherein the owner or operator commits to permanently shut down the emission source prior to December 31, 2014.”

New York’s revised system averaging plan is acceptable to EPA as it is enforceable through federally enforceable title V permits and it reflects current situations where there could be multiple ownership of a particular facility.

EPA evaluated the provisions of Part 227–2 for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

#### VI. What other revisions did New York make?

New York also made administrative changes to Part 200, “General Provisions” which reflect implementation of the Part 212, 220 and 227–2 provisions. The Part 200 revisions also reflect implementation of provisions for three previously approved New York regulations, Part 228, “Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers,” Part 234, “Graphic Arts,” and Part 241, “Asphalt Pavement and Asphalt Based Surface Coating,” (see 77 FR 13974). Specifically, New York made amendments to section 200.1, “Definitions.” The section 200.1 amendments add the definitions for the terms boiler, combined cycle combustion turbine, combustion turbine, continuous emissions monitoring system (CEMS) certification protocol, continuous emissions monitoring system plan, emergency power generating stationary internal

combustion engine, simple cycle combustion turbine, and very large boiler. These definitions are being included under section 200.1 for consistency due to their use in multiple regulations.

The revisions to Part 200 will also add new references in section 200.9, “Referenced Material,” Table 1. The revisions to Table 1 include all documents referenced in the proposed amendments to Parts 212, 220, 227–2 and previously approved Parts 228, 234 and 241. It is important to note that EPA is proposing to approve only those revisions made to Part 200, specifically sections 200.1 and 200.9, as effective January 1, 2011.

#### VII. What is EPA’s conclusion?

EPA has evaluated New York’s submittal for consistency with the Act, EPA regulations, and EPA policy. EPA proposes that the revisions made to 6 NYCRR Part 200, “General Provisions,” Part 212, “General Process Emission Sources,” Part 220, “Portland Cement Plants and Glass Plants,” and Part 227–2, “Reasonably Available Control Technology (RACT) For Major Facilities of Oxides of Nitrogen (NO<sub>x</sub>)” with effective dates of January 1, 2011, September 30, 2010, July 11, 2010 and July 8, 2010, respectively, meet the SIP requirements of the Act. EPA is proposing to: approve sections 200.1 and 200.9; approve Part 212; to conditionally approve Part 220 based on New York’s commitment to submit the individual RACT determinations to EPA as SIP revisions by December 1, 2013; and, to approve Part 227–2. These revisions meet the requirements of the Act and EPA’s regulations, and are consistent with EPA’s guidance and policy. EPA is taking this action pursuant to section 110 and part D of the Act and EPA’s regulations.

EPA is proposing a conditional approval of New York’s proposed revisions to 6 NYCRR Part 220 based on New York’s February 28, 2013 letter, committing to submit the applicable NO<sub>x</sub> RACT single source SIPs by December 1, 2013.

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to adopt the identified source specific SIP revisions. If the State fails to do so, this action will become a disapproval upon the State’s failure to meet its commitment. EPA will notify the State by letter that this

action has occurred. If the conditional approval converts to a disapproval, the commitment will no longer be a part of the approved New York SIP. Upon notification to the State that the conditional approval has converted to a disapproval, EPA will publish a notice in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If EPA disapproves the proposed revisions to Part 220, such action will start a sanctions and FIP clock (see section VII). If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP. If EPA approves the submittals, the revisions to Part 220 will be fully approved into the SIP in their entirety and the conditional approval removed.

#### VIII. What are the consequences if a final conditional approval is converted to a disapproval?

For didactical purposes, EPA provides the following discussion regarding the consequences of a final conditional approval converting to a disapproval. EPA does not expect this situation to occur.

The Act provides for the imposition of sanctions and the promulgation of a federal implementation plan (FIP) if states fail to correct any deficiencies identified by EPA in a final disapproval action within certain timeframes.

##### A. What are the Act’s provisions for sanctions?

As mentioned above, if New York does not submit the applicable NO<sub>x</sub> RACT single source SIPs by September 1, 2013, EPA’s conditional approval converts to a disapproval. If EPA disapproves a required SIP submittal or component of a SIP submittal, section 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after EPA disapproves the SIP submittal. Under EPA’s sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the Act. If, six months after the first sanction is imposed, the state has still failed to submit a SIP for which EPA proposes full or conditional approval, the second sanction will apply. The second sanction is a limitation on the receipt of federal highway funds. EPA also has authority under section 110(m) to sanction broader than the affected area as defined in 52.31(a)(3).

*B. What federal implementation plan provisions apply if a state fails to submit an approvable plan?*

In addition to sanctions, if EPA finds that a state failed to submit the required SIP revision or if EPA disapproves the required SIP revision, or a portion thereof, EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected.

## IX. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) because application of those requirements would be inconsistent with the Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using

practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 1, 2013.

**Judith A. Enck,**

*Regional Administrator, Region 2.*

[FR Doc. 2013-08398 Filed 4-9-13; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 411

[CMS-1454-P]

RIN 0938-AR70

### Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships: Exception for Certain Electronic Health Records Arrangements

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the exception to the physician self-referral prohibition for certain arrangements involving the donation of electronic health records items and services. Specifically, it would extend the sunset date of the exception, remove the electronic prescribing capability requirement, and update the provision under which electronic health records technology is deemed interoperable. In addition, we are requesting public comment on other changes we are considering.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 10, 2013.

**ADDRESSES:** In commenting, please refer to file code CMS-1454-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1454-P, P.O. Box 8013, Baltimore, MD 21244-8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1454-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.