

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[Docket No. EPA-R02-OAR-2006-0303; FRL-8164-3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the New York State Implementation Plan (SIP) related to the control of oxides of nitrogen (NO_x) and volatile organic compounds (VOC) from stationary sources. The SIP revision consists of amendments to New York's Code of Rules and Regulations Parts 214, "Byproduct Coke Oven Batteries," and 216, "Iron and/or Steel Processes." The revision was submitted to comply with the 1-hour ozone Clean Air Act reasonably available control technology requirements for major sources of VOC and NO_x not covered by Control Techniques Guidelines. The intended effect of this action is to propose approval of control strategies which will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

DATES: Comments must be received on or before June 1, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R02-OAR-2006-0303, by one of the following methods:

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

- E-mail: Werner.Raymond@epa.gov.
- Fax: 212-637-3901.
- Mail: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

- Hand Delivery: Raymond Werner, 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 ID No. EPA-R02-OAR-2006-0303. EPA's policy is that all comments received will be included in the public

docket without change and may be made available online at <http://www.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 <http://www.regulations.gov> or e-mail. The <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 e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3381.

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I. What Action Is EPA Proposing Today?

The EPA is proposing to approve a revision to the New York Ozone State Implementation Plan (SIP). The SIP revision consists of amendments to New York's Code of Rules and Regulations, Parts 214, "Byproduct Coke Oven Batteries," and 216, "Iron and/or Steel Processes" and is intended to comply with certain 1-hour ozone Clean Air Act Reasonably Available Control Technology (RACT) requirements.

II. What Are the Clean Air Act Requirements?

A. What are the volatile organic compound (VOC) Reasonably Available Control Technology (RACT) requirements?

The Clean Air Act (Act) as amended in 1990 sets forth a number of requirements that states with areas designated as nonattainment for ozone must satisfy and a timetable for satisfying these requirements. The specific requirements vary depending upon the severity of the ozone problem. One of the requirements, and the subject of this proposed rulemaking, requires states to adopt RACT rules for various VOC source categories. EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762; September 17, 1979).

Section 182 of the Act sets forth two separate RACT requirements for ozone nonattainment areas. The first requirement, contained in section 182(a)(2)(A) of the Act, and referred to as RACT fix-up, requires the correction of RACT rules for which EPA identified deficiencies before the Act was amended in 1990. The second requirement, set forth in section 182(b)(2) of the Act, applies to moderate (or worse) ozone nonattainment areas as well as to ozone transport regions. The goal of this latter requirement is to ensure that areas not required previously to adopt RACT for some or all of the major stationary sources, adopt rules and "catch-up" to those areas subject to more stringent RACT requirements.

EPA issued three sets of Control Techniques Guideline (CTG) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those

sources not covered by a CTG are referred to as non-CTG sources. Section 182(b)(2) of the Act requires states with ozone nonattainment areas classified as moderate or worse to develop RACT for all pre-enactment CTG source categories, for all sources subject to post-enactment CTGs and for all non-CTG major sources in those areas. Under the pre-1990 Clean Air Act, ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions.

New York has previously addressed most of these requirements and EPA has approved these revisions into the New York State Implementation Plan (SIP).

B. What are the oxides of nitrogen (NO_x) RACT requirements?

The air quality planning requirements for the reduction of NO_x emissions using RACT are set out in section 182(f) of the Act. EPA further defines the section 182(f) requirements in a notice, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," published November 25, 1992 (57 FR 55620). Refer to the November 25, 1992 notice for detailed information on the NO_x requirements. Also refer to additional guidance memoranda that EPA released subsequent to the NO_x Supplement. The additional guidance includes but is not limited to: EPA publication EPA-452/R-96-005 (March 1996) entitled "NO_x Policy Documents for The Clean Air Act of 1990;" EPA's policy memorandum on the approval options for generic RACT rules submitted by states entitled "Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirement and Certain NO_x RACT Requirements" (November 7, 1996); EPA's draft system-wide averaging trading guidance (December 1993); and EPA's publications of "Alternative Control Technique Documents," which are technical documents identifying alternative controls for most categories of stationary sources of NO_x.

The Act requires that states establish requirements, where practicable, for major stationary sources to include NO_x RACT controls by May 31, 1995.

III. What Did New York Include in Its Submittals?

On July 8, 1994, New York State Department of Environmental Conservation (NYSDEC) submitted to EPA a request to revise its SIP. The revisions consisted of amendments to New York's Code of Rules and Regulations (NYCRR) Parts 214,

"Byproduct Coke Oven Batteries," and 216, "Iron and/or Steel Processes." Parts 214 and 216 were adopted by the State on July 8, 1994 and became effective on September 22, 1994. These regulations are intended to address, at least in part, the requirements of the Act explained in Section I of this notice. It should be noted that because the specific requirements of the Act which New York must address vary relative to the severity of the ozone problem in a specific metropolitan area, the applicability of New York's Parts 214 and 216 also varies accordingly. A summary of EPA's review and findings concerning the revisions to Parts 214 and 216 follows.

IV. What Are the Revisions to Part 214, "By-Product Coke Oven Batteries" and Part 216, "Iron and/or Steel Processes"?

Part 214

Revised Part 214 includes definitions which have been added for convenience in interpreting the provisions of Part 214. Revised Part 214 also includes a new subdivision, subpart 214.9(b) which requires facilities subject to this rule to comply with RACT requirements. Facilities subject to this rule must submit a compliance plan which identifies RACT for each NO_x and VOC emission point or limit the facility's potential to emit these contaminants below threshold applicability levels through federally and state enforceable special conditions in permits to construct and/or certificates to operate. A compliance plan must identify the emission points not equipped with RACT and must include a schedule for installation of RACT. Subpart 214.9(b) required that compliance plans be submitted to the NYSDEC by October 20, 1994, and RACT implemented by May 31, 1995.

VOC emission points which are subject to and are in compliance with subparts L or FF of the national emission standards for hazardous air pollutants in 40 CFR Part 61 are considered to be equipped with RACT for purposes of compliance with subpart 214.9(b).

Pursuant to subpart 214.9(b)(5), any other process specific RACT determinations developed by the facilities, which have been determined by the NYSDEC to be acceptable, must be submitted to EPA for approval as SIP revisions.

Part 216

Revised Part 216 includes definitions which have been added for convenience in interpreting the provisions of Part 216. Revised Part 216 also includes a

new subdivision, subpart 216.5 which requires facilities subject to this rule to comply with RACT requirements. Facilities subject to this rule must submit a compliance plan which identifies RACT for each NO_x and VOC emission point or limit the facility's potential to emit these contaminants below threshold applicability levels through federally and state enforceable special conditions in permits to construct and/or certificates to operate. A compliance plan must identify the emission points not equipped with RACT and must include a schedule for installation of RACT. Subpart 216.5 required that compliance plans be submitted to the NYSDEC by October 20, 1994, and RACT implemented by May 31, 1995.

Pursuant to subpart 216.5(c)(4), any process specific RACT determinations developed by the facilities, which have been determined by the NYSDEC to be acceptable, must be submitted to EPA for approval as SIP revisions.

A. What Is the Definition of Generic RACT and Do Parts 214 and 216 Contain Generic RACT Provisions?

Generic provisions are those portions of a regulation which require the application of RACT to an emission point, but the degree of control is not specified in the rule and is to be determined on a case-by-case basis taking technological and economic factors into consideration. New York refers to these as "process specific RACT demonstrations." Under the Act, these individually determined RACT limits would then need to be submitted by a state as a SIP revision for EPA approval. On November 7, 1996, EPA issued a policy memorandum providing additional guidance for approving regulations which contain these "generic provisions". (Sally Shaver, Director, Air Quality Strategies and Standards Division, memorandum to EPA Division Directors, "Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirement and Certain NO_x RACT Requirements").

EPA policy allows for the full approval of state rules containing generic RACT requirements prior to actual EPA approval of SIP revisions establishing RACT for each individual major source making use of the generic RACT requirements. However, to allow this, the state must provide an analysis that shows that the sources likely to make use of these generic requirements would only represent a small amount or de-minimis level of emissions and that the majority of emissions would be regulated by a specified RACT level of

control included in the general rule. An EPA approval of this generic provision does not exempt the remaining sources from complying with RACT, but does provide an opportunity for EPA to make a determination that the state has met a non-CTG requirement prior to taking action on all of the individual case-by-case RACT determinations. Parts 214 and 216 both include generic RACT provisions requiring the application of RACT on a case-by-case basis for any item of equipment, process or source where the degree of control has not been specified in the general rule.

B. How Has New York Addressed the Case-by-Case RACT Determinations?

In a letter dated March 1, 2006, New York provided sufficient data for EPA to evaluate the de-minimis level of NO_x emissions from generic sources in the State that are subject to Parts 214 and 216. New York also determined that there are no sources located in New York State which are subject to the VOC RACT requirements of Parts 214 and 216 which would need to submit individual case-by-case RACT determinations as single source SIP revisions. Therefore, New York provided de-minimis data for NO_x sources only.

Given the State's data, EPA determined that 0.50 percent of the NO_x emissions subject to RACT controls have either not yet been submitted to EPA as single source SIP revisions or, if submitted, have not yet been approved by EPA. This 0.50 percent level includes NO_x emissions from four facilities for which New York is required to submit single source SIP revisions addressing NO_x RACT requirements for these facilities. EPA policy indicates that 0.50 percent is below the de-minimis level.¹ EPA has determined that New York's NO_x RACT regulation conforms to EPA's policy regarding the approval of generic RACT provisions or rules. Therefore, EPA proposes full approval of the generic RACT provisions of Part 214 and 216. Subparts 214.9(b)(5) and 216.5(c)(4) require New York to submit any remaining case-by-case RACT determinations for the NO_x sources to EPA for approval as single source SIP revisions.

¹ EPA guidance ("Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirement and Certain NO_x RACT Requirements," November 7, 1996) provides that where the non-approved RACT requirements concern sources whose emissions represent less than 5 percent of the 1990 stationary source NO_x inventory, excluding utility boilers, it may be appropriate to issue a full approval of the generic RACT regulation.

V. Conclusion

EPA has evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA is proposing to approve the revisions to Part 214, "By-Product Coke Oven Batteries" and Part 216, "Iron and/or Steel Processes" of New York's regulations as meeting the VOC and NO_x RACT "catch-up" requirements under sections 182(b)(2) and 182(f) of the Act for non-CTG major sources.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the

distribution of power and responsibilities established in the Act. This proposed 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 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 proposed 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.*).

List of Subjects in 40 CFR Part 52

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

Dated: April 24, 2006.

Alan J. Steinberg,

Regional Administrator, Region 2.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-R06-OAR-2005-TX-0034; FRL-8164-5]

National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Texas Commission on Environmental Quality (TCEQ) has submitted a request for receiving delegation of EPA authority for implementation and enforcement of National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources (both part 70 and non-part 70 sources). The requests apply to