

New York State regulation	State effective date	Latest EPA approval date	Comments
* * * Part 227, Stationary Combustion Installations [1972 version]/section 227.2(b)(1). Part 227, Stationary Combustion Installations Subpart 227-1, Stationary Combustion Installations ...	5/1/72 3/5/99	9/22/72 37 FR 19814 [4/19/00 and FR page citation].	EPA is including the definition of "federally enforceable" with the understanding that (1) the definition applies to provisions of a Title V permit that are correctly identified as federally enforceable, and (2) a source accepts operating limits and conditions to lower its potential to emit to become a minor source, not to "avoid" applicable requirements. EPA is approving incorporation by reference of those documents that are not already federally enforceable. * * *
Subpart 227-2, Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO _x)/sections 227-2.3(h), 227-2.5(b), 227-2.5(e), and 227-2.6.	3/5/99	[4/19/00 and FR page citation].	Existing Part 227 is renumbered Subpart 227-1. Renumbered sections 227-1.2(a)(2), 227-1.4(a), and 227-1.4(d) continue to be disapproved according to 40 CFR 52.1678(d) and 52.1680(a). (New York repealed existing Part 227.5.) EPA is including sections 227-2.3(h), 227-2.5(b), 227-2.5(e), and 227-2.6 as part of the SIP for purposes of the NO _x Budget Trading Program. EPA will act on the remaining sections of 227-2 in a future rulemaking.
Subpart 227-3, Pre-2003 Nitrogen Oxides Emissions Budget and Allowance Program.	3/5/99	[4/19/00 and FR page citation].	Approval of NO _x Budget Trading Program for 1999, 2000, 2001 and 2002. To meet its attainment demonstration commitments and the interstate MOU, New York will need to amend their regulations to establish the NO _x caps in the State during 2003 and beyond. * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY41-210; FRL-6572-9]

Approval and Promulgation of Air Quality Implementation Plans; New York; Approval of Carbon Monoxide State Implementation Plan Revision; Removal of the Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New York on August 30, 1999. That revision removes New York's oxygenated gasoline program as a carbon monoxide control measure from the State's SIP. EPA is approving that revision because EPA has also determined that the New York-Northern New Jersey-Long Island carbon monoxide nonattainment area has attained the carbon monoxide National Ambient Air Quality Standards.

EFFECTIVE DATE: This rule will be effective May 19, 2000.

ADDRESSES: Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,
 Region 2 Office, Air Programs Branch,
 290 Broadway, 25th Floor, New York,
 New York 10007-1866
 New York State Department of
 Environmental Conservation, 50 Wolf
 Road, Albany, New York 12233

FOR FURTHER INFORMATION CONTACT:
 Michael P. Moltzen, Air Programs
 Branch, 290 Broadway, 25th Floor, New
 York, NY 10007-1866, (212) 637-3710.

SUPPLEMENTARY INFORMATION: EPA is determining that the New York-Northern New Jersey-Long Island carbon monoxide (CO) nonattainment area¹ has attained the health-related CO National Ambient Air Quality Standards (NAAQS). EPA is also determining that New York's winter-time oxygenated gasoline (oxyfuel) program is no longer needed to ensure that air quality levels remain healthful. As a consequence of these determinations, EPA is approving

¹ This area is comprised of counties in Northern New Jersey, downstate New York and Southwestern Connecticut. The Connecticut portion of the area was redesignated to attainment on March 10, 1999 at 64 FR 12005. The remainder of the area is still designated nonattainment.

a State Implementation Plan (SIP) revision submitted by the State of New York on August 30, 1999. That revision removes New York's oxyfuel program as a CO control measure from the State's CO SIP. It has been determined that the program is no longer necessary to keep ambient CO concentrations below the CO NAAQS. For additional detail regarding this determination, the reader is referred to the proposal for today's action, published in the October 8, 1999 **Federal Register** (64 FR 54851). Additional detail regarding that determination can also be found in EPA's proposed and final rules removing oxyfuel in New Jersey, which are published in the September 9, 1999 **Federal Register** (64 FR 48970) and the November 22, 1999 **Federal Register** (64 FR 63690), respectively. In addition, EPA's direct final action approving the removal of the oxyfuel program in Connecticut can be found in the December 1, 1999 **Federal Register** (64 FR 67188). It should be noted that there were no adverse comments associated with the proposed removal of the winter-time oxyfuel program in New York State.

EPA intends to propose action on the remainder of New York's August 30, 1999 CO SIP revision in a separate notice which will be published in the **Federal Register** shortly. Neither New

York's redesignation request nor any of the other elements in that submittal are directly related to, or required for, the action EPA is finalizing today.

Conclusion

EPA is finalizing a rulemaking to approve New York's August 30, 1999 SIP revision to remove the State's oxygenated gasoline program from the federally-approved SIP. Therefore, sections of New York's regulation Part 225-3, "Fuel Composition and Use—Gasoline", specifically those that provide for the oxyfuel program, are removed from the SIP. See § 52.1670 *Identification of Plan*, in the regulations section of this notice, for further detail on the sections of New York's Part 225-3 which pertain to the oxyfuel program and which are removed from the State's CO SIP. EPA's authority to approve removal of a state's oxyfuel program is set forth at Clean Air Act section 211(m)(6). EPA has determined that the criteria of section 211(m)(6) have been satisfied and removal of the oxyfuel program at this time is appropriate.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation.

EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation. This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement

supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that

achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves changes to the SIP and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 19, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

Incorporation by reference, Intergovernmental relations.

Dated: March 23, 2000.

William J. Muszynski,
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)(96) to read as follows:

§ 52.1670 Identification of plan.

* * * * *
(c) * * *
* * * * *

(96) Revisions to the New York State Implementation Plan (SIP) for carbon monoxide concerning the oxyfuel program, dated August 30, 1999, submitted by the New York State Department of Environmental Conservation (NYSDEC).

3. The table in § 52.1679 is amended by removing the existing entry for Subpart 225-3, "Fuel Composition and Use—Gasoline," and adding a new entry for Subpart 225-3 in numerical order to read as follows:

§ 52.1679 EPA—approved New York State regulations.

State regulation	State effective date	EPA approved date	Comments
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Part 225-3, "Fuel Composition and Use—Gasoline;" sections 225-3.1, 225-3.2, 225-3.3, 225-3.6, 225-3.8, 225-3.10.	9/2/93	[4/19/00 and citation of this document].	This action removes the following sections of Part 225-3, which pertain to the oxygenated gasoline program, from the State's CO SIP: sections 225-3.4, 225-3.5, 225-3.7, 225-3.9. The Variance adopted by the State pursuant to section 225-3.8 becomes applicable only if approved by EPA as a SIP revision.
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