

telephone number is (214) 665-2115. Ms. Wiley can also be reached via electronic mail at wiley.adina@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: July 11, 2007.

Lawrence Starfield,

Acting Regional Administrator, EPA Region 6.

[FR Doc. E7-14067 Filed 7-19-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. EPA-R02-OAR-2007-0368, FRL-8442-3]

Approval and Promulgation of Implementation Plans; New York Emission Statement Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of New York on July 7, 2006 for the purpose of enhancing an existing Emission Statement Program for stationary sources in New York. The SIP revision consists of amendments to Title 6 of the New York Codes Rules and Regulations, Chapter III, Part 202, Subpart 202-2,

Emission Statements. The SIP revision was submitted by New York to satisfy the ozone nonattainment provisions of the Clean Air Act. These provisions require states in which all or part of any ozone nonattainment area is located to submit a revision to its SIP which requires owner/operators of stationary sources of volatile organic compounds (VOC) and oxides of nitrogen (NO_x) to provide the State with a statement, at least annually, of the source's actual emissions of VOC and NO_x.

The Emission Statement SIP revision EPA proposes to approve enhances the reporting requirements for VOC and NO_x and expands the reporting requirement, based on specified emission thresholds, to include carbon monoxide (CO), sulfur dioxides (SO₂), particulate matter measuring 2.5 microns or less (PM_{2.5}), particulate matter measuring 10 microns or less (PM₁₀), ammonia (NH₃), lead (Pb) and lead compounds and hazardous air pollutants (HAPS). The intended effect is to obtain improved emissions related data from facilities located in New York, allowing New York to more effectively plan for and attain the national ambient air quality standards (NAAQS). The Emission Statement rule also improves EPA's and the public's access to facility-specific emission related data.

DATES: Comments must be received on or before August 20, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R02-OAR-2006-0368, by one of the following methods:

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-2006-0368. 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, 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 or e-mail. The 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 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:

Raymond K. Forde, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3716, forde.raymond@epa.gov.

Copies of the State submittals 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.

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for this section:

- I. What Is the Nature of EPA's Action?
- II. What Are the Emissions Reporting Required by the Clean Air Act and How Does New York's Regulation Address Them?
- III. What Was Included in New York's Submittal?
- IV. What Is EPA's Conclusion?
- V. Statutory and Executive Order Reviews

I. What Is the Nature of EPA's Action?

EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of New York on July 7, 2006 for the purpose of enhancing an existing Emission Statement program for stationary sources in New York. The SIP revision consists of amendments to Title 6 of the New York Codes Rules and Regulations (NYCRR), Chapter III, Part 202, Subpart 202-2, Emission Statements (Emission Statement rule).

The SIP revision was submitted by New York to satisfy the ozone nonattainment provisions of the Clean Air Act. These provisions require states in which all or part of any ozone non-attainment area is located to submit a revision to its SIP which requires owner/operators of stationary sources of volatile organic compounds (VOC) and oxides of nitrogen (NO_x) to provide the State with a statement, at least annually, of the source's actual emissions of VOC and NO_x.

II. What Are the Emissions Reporting Required by the Clean Air Act and How Does New York's Regulation Address Them?

Emission Statements (Annual Reporting of VOC and NO_x)

The air quality planning and SIP requirements for ozone nonattainment and transport areas are established in Subparts 1 and 2 of Part D of Title I of the Clean Air Act, as amended in 1990 (the Act). EPA has published a "General Preamble" and "Appendices to the General Preamble" (see 57 FR 13498 (April 16, 1992), and 57 FR 18070 (April 28, 1992)) describing how EPA intends to review SIPs submitted under Title I of the Act.

EPA has also issued a draft guidance document, entitled "Guidance on the Implementation of an Emission Statement Program" (Emission Statement Guidance), dated July 1992, which describes the minimum requirements for approvable emission statement programs.

Section 182(a)(3)(B)(i) of the Act requires states in which all or part of any ozone non-attainment area is located to submit SIP revisions to EPA by November 15, 1992, which require owner/operators of stationary sources of VOC and NO_x to provide the state with a statement, at least annually, of the source's actual emissions of VOC and NO_x. Sources were to submit the first emission statements to their respective states by November 15, 1993. Pursuant to the Emission Statement Guidance, if the source emits either VOC or NO_x at or above levels for which the State

Emission Statement rule requires reporting, the other pollutant (VOC or NO_x) from the same facility should be included in the emission statement, even if the pollutant is emitted at levels below the minimum reporting level.

Section 182(a)(3)(B)(ii) of the Act allows states to waive, with EPA approval, the requirement for an emission statement for classes or categories of sources located in nonattainment areas, which emit less than 25 tons per year of actual plant-wide VOC and NO_x, provided the class or category is included in the base year and periodic inventories and emissions are calculated using emission factors established by EPA (such as those found in EPA publication AP-42) or other methods acceptable to EPA.

EPA has determined that New York's Emission Statement rule, which requires facilities to report information for the criteria pollutants and the associated precursors listed above, satisfies the federal emission statement reporting requirements for major sources.

Consolidated Emission Reporting Rule (Annual Reporting for All Criteria Pollutants)

In order to consolidate reporting requirements by the states to EPA, on June 10, 2002 (See 67 FR 39602), EPA published the final Consolidated Emissions Reporting Rule (CERR). The purpose of the CERR is to simplify the states' annual reporting, to EPA, of criteria pollutants (VOC, NO_x, SO₂, PM₁₀, PM_{2.5}, CO, Pb) for which National Ambient Air Quality Standards (NAAQS) have been established, and annual reporting of NH₃, a precursor pollutant. The CERR also provides options for data collection and exchange, and unified reporting dates for various categories of criteria pollutant emission inventories. The CERR requires states to report annually to EPA on emissions of NO_x, CO, VOC, Pb, SO₂ and PM₁₀, for industrial point sources, based on specific emission thresholds. The CERR emissions reports for calendar year 2001 were due on June 1, 2003, and subsequent reports were due every year thereafter (i.e., calendar year 2002 emission inventory due June 1, 2004, etc.). Reporting of PM_{2.5} and NH₃ from point sources was not required until June 2004, for emissions that occurred during calendar year 2002.

EPA has determined that New York's Emission Statement rule, which requires facilities to report information for the criteria pollutants and the associated precursors mentioned above, satisfies the federal CERR requirements for major sources.

Hazardous Air Pollutants (Periodic Reporting of Hazardous Air Pollutants)

In addition to the emission inventory provisions related to the criteria pollutants, EPA has requested that the states report on hazardous air pollutants (HAPs) emissions from anthropogenic sources, for the National Toxics Inventory (NTI). The NTI is a comprehensive national inventory of HAP emissions from stationary and mobile sources that is revised by EPA every three years.

The NTI contains emission estimates for point sources, non-point sources and mobile sources. Point sources include major and non-point source categories as defined in Section 112 of the Clean Air Act. Non-point source categories include area source categories. Individual emission estimates are developed for point sources, while aggregate emission estimates at the county level are developed and recorded for non-point stationary and mobile sources. The NTI also identifies facilities and non-point source categories that are associated with MACT categories.

Need for NTI Inventory

Title V of the Act requires the Administrator to perform an oversight role with respect to state issued permits, including permits issued to major sources of HAP emissions. In order to determine whether that program is being appropriately and lawfully administered by the states with respect to major HAP sources, a HAP emission inventory is necessary. States are developing programs to regulate HAPs, and Title V of the Act requires state Title V programs to include permits for all HAP sources emitting major quantities of HAPs (10 tons of one HAP or 25 tons of multiple HAPs per year). Thus, EPA believes including HAPs in the point source inventory is appropriate and necessary.

Section 112(n)(1)(A) of the Act requires EPA to report to Congress on the hazards to public health reasonably anticipated to occur as a result of emissions from electric utility steam generating units. Section 112(n)(1)(B) requires EPA to provide a report to Congress that considers the rate and mass of HAP emissions and the health and environmental effects of these emissions. Section 112(c)(6) requires a list of categories and subcategories of HAP sources subject to standards that account for not less than 90 percent of the aggregate emission of each pollutant. Although these new requirements do not include specific provisions requiring the compilation of HAP

emissions inventories, they do introduce the need for such inventories in order to carry out the mandate of the statute.

In addition, Section 112(k)(3) of the Act mandates that EPA develop a strategy to control emissions of HAPs from area sources in urban areas, and that the strategy achieves a reduction in the incidence of cancer attributable to exposure to HAPs emitted by stationary sources of not less than 75 percent, considering control of emissions from all stationary sources, as well as achieves a substantial reduction in public health risks posed by HAPs from area sources. These mandated risk reductions are to be achieved by taking into account all emission control measures implemented by the Administrator or by the states under this or any other laws. A reliable HAP emission inventory covering all stationary sources of HAPs, including point and area sources, is important in implementing the mandated strategy and demonstrating that the strategy achieves the mandated risk reductions. It would be virtually impossible for EPA to identify and estimate HAP-specific emission reductions from all the Federal and state rules that might result in HAP emission reductions. Therefore, EPA has determined that development of the strategy and assessment of progress in achieving the strategic goals requires the development and periodic update of a HAP emission inventory. As presented in the July 19, 1999 **Federal Register** notice on the National Air Toxics Program: The Integrated Urban Strategy (64 FR 38706), a designed approach has been developed that depends upon a reliable and periodically updated HAP emission inventory as a critical element in the assessments that support the development and evaluation of our urban strategy.

EPA has determined that New York's Emission Statement rule, which requires facilities to report information for the HAPs, assists the State in satisfying the HAPs reporting requirements for major sources.

III. What Was Included in New York's Submittal?

New York's Submittal

On July 7, 2006, New York submitted a SIP revision for ozone which included an adopted Emission Statement rule. The regulation amends Title 6 of the NYCRR, Subpart 202-2, Emission Statements, which was originally adopted on July 13, 2004. On April 12, 2005, the New York State Department of Environmental Conservation (NYSDEC)

adopted these amendments, which became effective on May 29, 2005.

EPA's Findings

EPA has determined that an approvable Emission Statement program must have several components. Specifically, a state must submit its program as a revision to its SIP, and the state's emission statement program must meet the minimum requirements for reporting as outlined in EPA's Emission Statement Guidance. The program must include, at a minimum, provisions specifying source applicability, definitions, compliance, and specific source reporting requirements.

EPA's technical review of New York's Emission Statement program is contained in a technical support document (emission statement enforceability checklist) available in the docket at www.regulations.gov or by contacting the person identified earlier in this notice.

Applicability

In ozone nonattainment areas within the State, facilities which emit or have the potential to emit VOC and/or NO_x in amounts of 25 tons per year or more must submit, to the State, an annual emission statement. In attainment areas located within the State, which is part of the ozone transport region (OTR) established by operation of law under Section 184 of the Act, New York's Emission Statement rule requires facilities actually emitting or having the potential to emit 50 tons per year or more of VOC or 100 tons per year or more of NO_x to submit, to the State, an annual emission statement.

For Title V affected facilities located in ozone nonattainment areas within the State, which emit or have the potential to emit VOC and/or NO_x in amounts of 25 tons per year or more, the Emission Statement rule includes provisions that require such facilities to submit annual emission statements for VOC, NO_x, CO, SO₂, Pb or lead compounds, PM₁₀, PM_{2.5}, NH₃ and HAPs.

For Title V affected facilities located in OTR attainment areas within the State, which emit or have the potential to emit 50 tons per year or more of VOC or 100 tons per year or more of NO_x, the Emission Statement rule includes provisions that require such facilities to submit annual emission statements for VOC, NO_x, CO, SO₂, Pb or lead compounds, PM₁₀, PM_{2.5}, NH₃, and HAPs.

New York's regulation includes provisions that require Title V facilities within the State, which emit or have the potential to emit 100 tons per year or more of any criteria pollutant, to submit

annual emission statements for VOC, NO_x, CO, SO₂, Pb or lead compounds, PM₁₀, PM_{2.5}, NH₃, and HAPs.

New York's regulation includes provisions that require Title V facilities which emit or have the potential to emit 10 tons per year or more of an individual HAP or 25 tons per year or more of multiple HAPs, to submit annual emission statements for VOC, NO_x, CO, SO₂, Pb or lead compounds, PM₁₀, PM_{2.5}, NH₃, and HAPs.

EPA has determined that New York's Emission Statement rule contains applicability provisions that are consistent with the minimum requirements for state emission statement SIPs. In addition, the Emission Statement rule assists the State in satisfying the annual reporting requirements for the federal CERR, and in developing a HAPs emission inventory for use in National Air Toxics Assessment.

Definitions

The key definitions that New York included in its Emission Statement regulation are consistent with the EPA guidance.

Compliance

Under Section 110 of the Act, all SIP requirements must be enforceable by the State and EPA. Article 71 of the New York Environmental Conservation Law provides the State with the authority to, among other things, issue compliance orders with appropriate penalties and injunctive relief for sources failing to comply with the Emission Statement rule. EPA has determined that New York has an adequate program in place to ensure that the Emission Statement rule is enforceable.

Reporting Requirements

In accordance with CAA Section 182(a)(3)(B) and the Emission Statement Guidance, the Emission Statement rule requires facilities to supply the necessary source-specific data elements in annual emission statements. The survey forms that New York provides to facilities for use in reporting emission data are not EPA forms, but still require the necessary data.

Confidential Business Information

On December 29, 2006, EPA sent a letter to NYSDEC, regarding New York's Emission Statement rule, requesting clarification on the rule's confidential business information (CBI) provision, as it relates to air pollutant emissions data collected under the emission statement program. The letter requested that NYSDEC clarify one issue related to the rule; the trade secret provision found in

Title 6 of the NYCRR, Chapter III, Part 202, Subpart 202–2.4(i). Specifically, EPA requested that NYSDEC supplement the July 7, 2006 SIP submittal with a letter that confirms the trade secret provision will not restrict: (1) The public's access to facility-related "emission data" that is contained in emission statements, (2) EPA's access to all information contained in emission statements submitted to New York, including any emissions related information claimed and/or designated as trade secret or as confidential business information, and (3) that confirms NYSDEC interprets 6 NYCRR Subpart 202–2.4(i), coupled with 6 NYCRR Subpart 200.2, Safeguarding Information, to require the submission to EPA and release to the public of all information that is considered to be emissions data, consistent with the applicable state and federal laws on public disclosure, including the Clean Air Act and its implementing regulations.

On April 11, 2007, NYSDEC sent a letter to EPA in response. EPA has reviewed the letter and has determined that NYSDEC has adequately addressed EPA's concerns.

IV. What Is EPA's Conclusion?

EPA has concluded that the New York Emission Statement rule contains the necessary applicability, compliance, enforcement and reporting requirements for an approvable emission statement program. EPA is proposing to approve 6 NYCRR, Chapter III, Part 202, Subpart 202–2, Emission Statements, as part of New York's SIP.

V. 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 Clean Air 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 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 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, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: July 8, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E7–14061 Filed 7–19–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 455

[CMS–2264–P]

RIN 0938–AO88

Medicaid Integrity Program; Limitation on Contractor Liability

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

ACTION: Proposed rule.

SUMMARY: Section 6034 of the Deficit Reduction Act of 2005 established the Medicaid Integrity Program to promote the integrity of the Medicaid program by authorizing the Centers for Medicare and Medicaid Services (CMS) to enter into contracts with contractors that will review the actions of individuals or entities furnishing items or services (whether fee-for-service, risk, or other basis) for which payment may be made under an approved State plan and/or any waiver of the plan approved under section 1115 of the Social Security Act; audit claims for payment of items or services furnished, or administrative services furnished, under a State plan; identify overpayments of individuals or entities receiving Federal funds; and educate providers of services, managed care entities, beneficiaries, and other individuals with respect to payment integrity and quality of care. This proposed rule would set forth limitations on a contractor's liability while performing these services under the Medicaid Integrity Program.

This proposed rule would provide for limitation of a contractor's liability for actions taken to carry out a contract under the Medicaid Integrity Program. The proposed rule would, to the extent possible, employ the same or comparable standards and other substantive and procedural provisions as are contained in section 1157 (Limitation on Liability) of the Social Security Act.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 20, 2007.