

(2) An application for a waiver of these requirements must state the compelling need for the waiver and describe the proposed operation and methods by which adequate levels of safety are to be obtained.

(g) *Enforcement.* Violations of this RNA should be reported to the Captain of the Port, Savannah, at (912) 652-4353. In accordance with the general regulations in § 165.13 of this part, no person may cause or authorize the operation of a vessel in the regulated navigation area contrary to the regulations.

Dated: May 2, 2002.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 02-11716 Filed 5-9-02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV 060-6019a; FRL-7208-4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Nitrogen Oxides Budget Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The revision was submitted in response to EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_x SIP Call." The revision establishes and requires a nitrogen oxides (NO_x) allowance trading program for large electric generating and industrial units, beginning in 2004, as well as requirements for reductions in NO_x emissions from cement manufacturing kilns. The intended effect of this action is to approve West Virginia's NO_x Budget Trading Program because it addresses the requirements of the NO_x SIP Call. On December 26, 2000, EPA made a finding that West Virginia had failed to submit a SIP in response to the NO_x SIP Call, thus starting the 18 and 24 month clocks, respectively, for the mandatory imposition of sanctions and the obligation for EPA to promulgate a Federal Implementation Plan (FIP). On May 1, 2002, West Virginia submitted,

as a SIP revision, its NO_x Budget Trading Program in response to the NO_x SIP Call. EPA found that SIP submission complete on May 1, 2002, thereby halting the sanctions clocks. Upon approval of this SIP revision, both the sanctions clocks and EPA's FIP obligation are terminated. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on July 9, 2002 without further notice, unless EPA receives adverse written comment by June 10, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, S.E., Charleston, WV 25304-2943.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814-2178, or by e-mail at fernandez.cristina@epa.gov. Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On May 1, 2002, the West Virginia Department of Environmental Protection submitted a revision to its SIP to address the requirements of the NO_x SIP Call. The revision consists of the adoption of Rule 45CSR26—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units and Rule 45CSR1—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides. The information in this section of this document is organized as follows:

I. EPA's Action

- A. What Action Is EPA Taking In This Final Rulemaking?
- B. What Are the General NO_x SIP Call Requirements?
- C. What Is EPA's NO_x Budget Trading Program?
- D. What Standards Did EPA Use to Evaluate West Virginia's Submittal?

II. West Virginia's NO_x Budget Trading Program

A. When Did West Virginia Submit the SIP Revision to EPA in Response to the NO_x SIP Call?

B. What Is West Virginia's NO_x Budget Program?

C. What Is the Result of EPA's Evaluation of West Virginia's Program?

III. Final Action

IV. Administrative Requirements

I. EPA's Action

A. What Action Is EPA Taking in This Final Rulemaking?

EPA is taking direct final action to approve the West Virginia NO_x Budget Trading Program submitted as a SIP revision on May 1, 2002. Upon approval of this SIP revision, both the sanctions clocks and EPA's FIP obligation are terminated.

B. What Are the General NO_x SIP Call Requirements?

On October 27, 1998 (63 FR 57356), EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_x SIP Call." The NO_x SIP Call requires the District of Columbia and 22 States, including West Virginia, to meet statewide NO_x emission budgets during the five-month period from May 1 through September 30. By meeting these budgets the states will reduce the amount of ground level ozone that is transported across the eastern United States. EPA has previously determined state-wide NO_x emission budgets for each affected jurisdiction to be met by the year 2007. EPA identified NO_x emission reductions, by source category, that could be achieved by using cost-effective measures. The source categories included were electric generating units (EGUs), non-electric generating units (non-EGUs), area sources, nonroad mobile sources and highway sources. However, the NO_x SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. In the NO_x SIP Call rule's preamble, EPA suggested that imposing statewide NO_x emissions caps on large fossil-fuel fired industrial boilers and electricity generating units would provide a highly cost effective means for States to meet their NO_x budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO_x per million British thermal units (lbs NO_x/MMBtu) at EGUs,

multiplied by the projected heat input (MMBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407, October 27, 1998. The calculation of the 2007 EGU emissions assumed that an emissions trading program would be part of an EGU control program. The NO_x SIP Call state budgets also assumed, on average, a 30 percent NO_x reduction from cement kilns, a 60 percent reduction from industrial boilers and combustion turbines, and a 90 percent reduction from internal combustion engines. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 MMBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day.

To assist the states in their efforts to meet the SIP Call, the NO_x SIP Call final rule included a model NO_x allowance trading regulation, called "NO_x Budget Trading Program for State Implementation Plans" (40 CFR part 96), that could be used by states to develop their regulations. The NO_x SIP Call rulemaking explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by EPA. See 63 FR 57458–57459, October 27, 1998.

EPA conducted several comment periods on various aspects of the NO_x SIP Call emissions inventories. On March 2, 2000 (65 FR 11222), EPA published additional technical amendments to the NO_x SIP Call. The March 2, 2000 final rulemaking established the inventories upon which West Virginia's final budget is based.

A number of parties, including certain states as well as industry and labor groups, challenged the October 27, 1998 (63 FR 57356) NO_x SIP Call Rule. On March 3, 2000, the D.C. Circuit issued its decision on the NO_x SIP Call ruling in favor of EPA on all of the major issues. *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000). However, the Court remanded certain matters for further rulemaking by EPA. EPA recently published a final notice that addresses one of the remanded issues and expects to publish this year another final notice that addresses the remaining remanded issues. Any additional emissions reductions required as a result of the final rulemaking will be reflected in the second phase portion (Phase II) of the NO_x SIP Call rule. West Virginia will be required to submit SIP revisions to address the Phase II of the NO_x SIP Call Rule.

C. What Is EPA's NO_x Budget Trading Program?

EPA's model NO_x budget and allowance trading rule, 40 CFR part 96, sets forth a NO_x emissions trading program for large EGUs and non-EGUs. A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The October 27, 1998 final rulemaking contains a full description of the EPA's model NO_x budget trading program. See 63 FR 57514–57538 and 40 CFR part 96. In general, air emissions trading uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a "cap and trade" program.

In a cap and trade program, the state or EPA sets a regulatory limit, or emissions budget, of mass emissions from a specific group of sources. The budget limits the total number of allocated allowances during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, e.g., one ton of airborne NO_x. At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner.

D. What Standards Did EPA Use To Evaluate West Virginia's Submittal?

The final NO_x SIP Call rule included a model NO_x budget trading program regulation at 40 CFR part 96. EPA used the model rule and 40 CFR 51.121 and 51.122 to evaluate West Virginia's NO_x Budget Trading Program.

II. West Virginia's NO_x Budget Trading Program

A. When Did West Virginia Submit the SIP Revision to EPA in Response to the NO_x SIP Call?

On May 1, 2002, the West Virginia Department of Environmental Protection submitted a revision to its SIP to address the requirements of the NO_x SIP Call.

B. What Is West Virginia's NO_x Budget Program?

West Virginia's SIP revision to address the requirements of the NO_x SIP Call consists of the adoption and submittal of Rule 45CSR26—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units and Rule 45CSR1—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides.

Rule 45CSR26 establishes and requires a NO_x allowance trading program for large electric generating units. The sections of Rule 45CSR26—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units which comprise West Virginia's SIP revision are as follows: sections 45–26–1 through 45–26–7, General Provisions; sections 45–26–10 through 45–26–14, NO_x Authorized Account Representative; sections 45–26–20 through 45–26–24, Permits; sections 45–26–30 through 45–26–31, Compliance Certifications; sections 45–26–40 through 45–26–43, NO_x Allowance Allocations; sections 45–26–50 through 45–26–57, Accounting Process for Deposit, Use and Transfer of Allowances; sections 45–26–60 through 45–26–62, NO_x Allowance Transfers; and sections 45–26–70 through 45–26–76, Monitoring, Recordkeeping and Reporting Requirements.

Rule 45CSR1 establishes and requires a NO_x allowance trading program for large non-electric generating units and reductions of NO_x emissions from cement manufacturing kilns. The sections of Rule 45CSR1—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides which comprise West Virginia's SIP revision are as follows: sections 45–1–1 through 45–1–7, General Provisions; sections 45–1–10 through 45–1–14, NO_x Authorized Account Representative; sections 45–1–20 through 45–1–24, Permits; sections 45–1–30 through 45–1–31, Compliance Certifications; sections 45–1–40 through 45–1–43, NO_x Allowance Allocations;

sections 45-1-50 through 45-1-57, Accounting Process for Deposit, Use and Transfer of Allowances; sections 45-1-60 through 45-1-62, NO_x Allowance Transfers; sections 45-1-70 through 45-1-76, Monitoring, Recordkeeping and Reporting Requirements; sections 45-1-80 through 45-1-88, Opt-In Requirements; section 45-1-100, Requirements for Emissions of NO_x from Cement Manufacturing Kilns.

Rule 45CSR26 and Rule 45CSR1 establish a NO_x cap and allowance trading program with a budget of 29,043 tons of NO_x for the ozone seasons of 2004 and beyond. The NO_x budgets for large electric generating units and large non-electric generating units are 26,859 and 2,184 tons of NO_x per ozone season, respectively. Cement manufacturing kilns are not part of the trading program. West Virginia voluntarily chose to follow EPA's model NO_x budget and allowance trading rule, 40 CFR part 96, that sets forth a NO_x emissions trading program for large EGUs and non-EGUs. Because West Virginia's NO_x Budget Trading Program is based upon EPA's model rule, West Virginia sources are allowed to participate in the interstate NO_x allowance trading program that EPA will administer for the participating states. West Virginia has adopted regulations that are substantively identical to 40 CFR part 96. Therefore, pursuant to 40 CFR 51.121(p)(1), West Virginia's SIP revision is automatically approved as satisfying its portion of NO_x emission reductions.

Under the NO_x Budget Trading Program, West Virginia allocates NO_x allowances to the EGUs and non-EGUs units that are affected by these requirements. The NO_x trading program generally applies to fossil fuel fired EGUs with a nameplate capacity equal to or greater than 25 MW that sell any amount of electricity as well as to non-EGUs that have a heat input capacity equal to or greater than 250 MMBtu per hour. Each NO_x allowance permits a unit to emit one ton of NO_x during the seasonal control period. NO_x allowances may be bought or sold. Unused NO_x allowances may also be banked for future use, with certain limitations. Owners will monitor their unit's NO_x emissions by using systems that meet the requirements of 40 CFR part 75, subpart H and will report resulting data to EPA electronically. Each budget unit complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a unit holds, it cannot emit

at levels that would violate other federal or state limits, for example, reasonably available control technology (RACT), new source performance standards, or title IV (the Federal Acid Rain program).

C. What Is the Result of EPA's Evaluation of West Virginia's Program?

EPA has evaluated West Virginia's May 1, 2002 SIP submittal and finds it approvable. The West Virginia NO_x Budget Trading Program is consistent with EPA's guidance and addresses the requirements of the NO_x SIP Call. EPA finds the NO_x control measures in West Virginia's NO_x Budget Trading Program and for the cement manufacturing kilns approvable. The May 1, 2002 submittal will strengthen West Virginia's SIP for reducing ground level ozone by providing NO_x reductions beginning in 2004.

West Virginia's SIP revision does not establish requirements for stationary internal combustion engines. West Virginia will be required to submit SIP revisions to address any additional emission reductions required to meet the State's overall emissions budget. In addition, West Virginia's submittal does not rely on any additional reductions beyond the anticipated federal measures in the mobile and area source categories.

On December 26, 2000 (65 FR 81366), EPA made a finding that West Virginia had failed to submit a SIP response to the NO_x SIP Call, thus starting 18 and 24 month clocks for the mandatory imposition of sanctions and the obligation for EPA to promulgate a Federal Implementation Plan (FIP) within 24 months. The effective date of that finding was January 25, 2001. On May 1, 2002, West Virginia submitted a SIP revision to satisfy the NO_x SIP Call. EPA found that SIP submission complete on May 1, 2002, thus, halting the sanctions clocks and terminating EPA's FIP obligation.

III. Final Action

EPA is approving West Virginia's Rules 45CSR45 and 45CSR1, submitted as a SIP revision on May 1, 2002. EPA finds that West Virginia's NO_x Budget Trading Program and the requirements for the cement manufacturing kilns are fully approvable because they satisfy the requirements of the NO_x SIP Call. Approval of this SIP revision fully terminates both the sanctions clocks and EPA's FIP obligation which officially started on January 25, 2001, the effective date of EPA's December 26, 2000 finding (FR 65 81366).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse

comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 9, 2002 without further notice unless EPA receives adverse comment by June 10, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this 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.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This

action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. 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 July 9, 2002. 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 approving West Virginia NO_x Budget Trading Program as satisfying the NO_x SIP Call may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 1, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 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 XX—West Virginia

2. Section 52.2520 is amended by adding paragraphs (c)(46) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(46) Revisions to the West Virginia Rules 45CSR26 and 45CSR1 submitted on May 1, 2002 by the West Virginia Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of May 1, 2002 from the Secretary of the West Virginia Department of Environmental Protection transmitting rules 45CSR26 and 45CSR1 to implement West Virginia's NO_x Budget Trading Program and requirements for reductions in NO_x emissions from cement manufacturing kilns.

(B) West Virginia Rule Title 45 Series 26, "Nitrogen Oxides Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units," consisting of sections 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 20, 21, 22, 23, 24, 30, 31, 40, 41, 42, 43, 50, 51, 52, 53, 54, 55, 56, 57, 60, 61, 62, 70, 71, 72, 73, 74, 75, and 76 effective May 1, 2002.

(C) West Virginia Rule Title 45 Series 1, "Nitrogen Oxides Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides," consisting of sections 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 20, 21, 22, 23, 24, 30, 31, 40, 41, 42, 43, 50, 51, 52, 53, 54, 55, 56, 57, 60, 61, 62, 70, 71, 72, 73, 74, 75, 76, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 100, effective May 1, 2002.

(ii) Additional Material—Other materials submitted by the State of West Virginia in support of and pertaining to Rules 45CSR26 and 45CSR1 listed in paragraphs (c)(46)(i)(B) and (C) of this section.

[FR Doc. 02-11722 Filed 5-9-02; 8:45 am]

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