

Dated: May 17, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 169-4116; FRL-6986-8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Nitrogen Oxides Budget Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania on October 30, 2000 and April 4, 2001. This revision responds to the 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." This revision establishes and requires a nitrogen oxides (NO_x) allowance trading program for large electric generating and industrial units, beginning in 2003. The intended effect of this action is to propose approval the Pennsylvania NO_x Budget Trading Program because it addresses the requirements of the NO_x SIP Call Phase I that will significantly reduce ozone transport in the eastern United States. EPA is proposing to approve this revision in accordance with the requirements of the Clean Air Act.

DATES: Written comments must be received on or before June 28, 2001.

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 Pennsylvania Department of Environmental Protection, Bureau of Air

Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814-2178, or by e-mail at fernandez.cristina@epa.gov.

SUPPLEMENTARY INFORMATION: On October 30, 2000 and April 4, 2001, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to the Pennsylvania SIP to address the requirements of the NO_x SIP Call Phase I. The information in this section is organized as follows:

I. EPA's Action

- What action is EPA proposing today?
- Why is EPA proposing this action?
- What are the general NO_x SIP Call requirements?
- What is EPA's NO_x budget trading program?
- What guidance did EPA use to evaluate Pennsylvania's submittal?

II. Pennsylvania's NO_x Budget Trading Program

- When did Pennsylvania submit the SIP revision to EPA in response to the NO_x SIP Call?
- What is the Pennsylvania NO_x Budget Trading Program?
- What is the result of EPA's evaluation of Pennsylvania's program?

III. Proposed Action

- NO_x SIP Call Requirements
- One-Hour Attainment Demonstration Plans

IV. Administrative Requirements

I. EPA's Action

A. What Action Is EPA Proposing Today?

EPA is proposing to approve the Pennsylvania SIP revision concerning the adoption of its NO_x Budget Trading Program, submitted on October 30, 2000 and April 4, 2001.

B. Why Is EPA Proposing This Action?

EPA is proposing this action for two purposes. Pennsylvania's NO_x Budget Trading Program regulations address the requirements of the NO_x SIP Call Phase I. In addition, Pennsylvania's NO_x Budget Trading Program regulations are part of the Pennsylvania one-hour ozone attainment demonstration plan for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area. The Pennsylvania one-hour attainment demonstration plan for the Philadelphia-Wilmington-Trenton ozone nonattainment area relies on the NO_x reductions associated with the NO_x Budget Trading Program in 2003 and beyond. Therefore, EPA is proposing to approve Pennsylvania's NO_x Budget Trading Program for two

reasons. First, because it addresses the requirements of the NO_x SIP Call Phase I, and secondly as a strengthening measure for the one-hour ozone standard attainment for Philadelphia-Wilmington-Trenton ozone nonattainment area.

C. What Are the General NO_x SIP Call Requirements?

On October 27, 1998, 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." See 63 FR 57356. The NO_x SIP Call requires 22 States and the District of Columbia to meet statewide NO_x emission budgets during the five month period between May 1 and October 1 in order to reduce the amount of ground level ozone that is transported across the eastern United States.

EPA 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 notice, 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 (lb. 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. 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% NO_x reduction from cement kilns, a 60% reduction from industrial boilers and combustion turbines, and a 90% 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 rulemaking notice 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 notice 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 the EPA. See 63 FR 57458–57459.

There were several periods during which EPA received comments on various aspects of the NO_x SIP Call emissions inventories. On March 2, 2000, EPA published additional technical amendments to the NO_x SIP Call in the **Federal Register** (65 FR 11222). The March 2, 2000 final rulemaking established the inventories upon which Pennsylvania's final budget is based.

On March 3, 2000, the D.C. Circuit issued its decision on the NO_x SIP Call ruling in favor of EPA on all the major issues. *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000). The Court denied petitioners' requests for rehearing or rehearing *en banc* on July 22, 2000. However, the Court ruled against EPA on four narrow issues. The Court remanded certain matters for further rulemaking by EPA. EPA expects to publish a proposal that addresses the remanded portion of the NO_x SIP Call Rule. Any additional emissions reductions required as a result of a final rulemaking on that proposal will be reflected in the second phase portion (Phase II) of the State's emissions budget. Pennsylvania will be required to submit SIP revisions to address the Phase II of the NO_x SIP Call Rule.

D. 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 **Federal Register** document 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 an emissions budget and allowance trading program, the state or EPA sets a regulatory limit, or emissions budget, in 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.

E. What Guidance Did EPA Use To Evaluate Pennsylvania's Submittal?

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

II. Pennsylvania's NO_x Budget Trading Program

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

On October 30, 2000 and April 4, 2001, PADEP submitted a revision to its SIP to address the requirements of the NO_x SIP Call Phase I. Pennsylvania's SIP revision to address the requirements of the NO_x SIP Call Phase I consists of the adoption of Chapter 145—Interstate Pollution Transport Reduction and amendments to Chapter 123—Standards for Contaminants.

B. What Is the Pennsylvania NO_x Budget Trading Program?

Pennsylvania's NO_x Budget Trading Program affects electric generating units and certain non-electric generating units. The Sections of 25 PA Code

Chapter 145—Interstate Pollution Transport Reduction which comprise Pennsylvania's SIP revision are as follows: Section 145.1 through 145.7, General Provisions; Section 145.10 through 145.14, NO_x Account; Section 145.30 through 145.31, Compliance Certification; Section 145.40 through 145.43, NO_x Allowance Allocations; Section 145.50 through 145.57, Accounting Process for Deposit Use and Transfer of Allowances; Section 145.60 through 145.62, NO_x Allowance Transfers; Section 145.70 through 145.76, Recordkeeping and Reporting Requirements; Section 145.80 through 145.88, Opt-In Process; Section 145.90, Emission Reduction Credit Provisions.

The Pennsylvania NO_x Budget Trading Program establishes and requires a NO_x allowance trading program for large electric generating and industrial units. It establishes a NO_x cap and allowance trading program with a budget of 50,843 tons of NO_x for the ozone seasons of 2003 and beyond. The NO_x budget for electric generating units and non-electric generating units is 47,224 and 3,619 tons of NO_x per ozone season, respectively. The Commonwealth of Pennsylvania 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 the Pennsylvania NO_x Budget Trading Program is based upon EPA's model rule, Pennsylvania sources are allowed to participate in the interstate NO_x allowance trading program that EPA will administer for the participating states. The Commonwealth of Pennsylvania has adopted regulations that are substantively identical to 40 CFR part 96. Therefore, pursuant to 40 CFR 51.121(p)(1), Pennsylvania's SIP revision is automatically approved as satisfying the same portion of the State's NO_x emission reduction obligations Pennsylvania projects such regulations will satisfy. Under the NO_x Budget Trading Program, Pennsylvania allocates NO_x allowances to the EGUs and non-EGUs units that are affected by these requirements. The NO_x trading program applies to all fossil fuel fired EGUs with a nameplate capacity greater than 25 MW or more that sell any amount of electricity to the grid as well as any non-EGUs that have a heat input capacity equal to or greater than 250 mmBtu per hour. Each NO_x allowance permits a source 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. Source owners will monitor their NO_x emissions by using systems that meet the requirements of 40 CFR part 75, subpart H, and report resulting data to EPA electronically. Each budget source 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 source 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).

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

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

EPA has evaluated Pennsylvania's SIP submittal and finds it approvable. The Pennsylvania NO_x Budget Trading Program is consistent with EPA's guidance and addresses the requirements of the NO_x SIP Call Phase I. EPA finds the NO_x control measures in the Pennsylvania's NO_x Budget Trading Program approvable. This revision will strengthen Pennsylvania's SIP for reducing ground level ozone by providing NO_x reductions beginning in 2003. Furthermore, Pennsylvania's NO_x Budget Trading Program is necessary to fulfill a requirement of the one-hour ozone attainment plan for the severe ozone nonattainment area of Pennsylvania. The Pennsylvania attainment demonstration plan for the Philadelphia-Wilmington-Trenton ozone nonattainment area relies on the NO_x reductions associated with the NO_x Budget Trading Program in 2003 and beyond. EPA finds that Pennsylvania's submittal is fully approvable because it addresses the requirements of the NO_x SIP Call Phase I and it is a strengthening measure for the Pennsylvania one-hour ozone attainment plan for the Philadelphia-Wilmington-Trenton ozone nonattainment area.

III. Proposed Actions

A. NO_x SIP Call Requirements

EPA is proposing to approve the Pennsylvania SIP revision consisting of its NO_x Budget Trading Program, submitted on October 30, 2000 and April 4, 2001, because it satisfies the requirements of the NO_x SIP Call Phase I.

B. One-Hour Attainment Demonstration Plan

EPA is also proposing to approve the Pennsylvania SIP revision consisting of its NO_x Budget Trading Program, submitted on October 30, 2000 and April 4, 2001, as a SIP strengthening measure necessary for Pennsylvania's one-hour ozone attainment plan for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area. As such, approval of this SIP revision is necessary for full approval of the attainment demonstration SIP for the Philadelphia-Wilmington-Trenton ozone nonattainment area.

IV. Administrative Requirements

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. This 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 (Public Law 104-4). This proposed rule also does 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), nor will it 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), because it 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 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This action proposing to approve the Pennsylvania NO_x Budget Trading Program 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: May 17, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

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