

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2015-0666; FRL-9937-17-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Regulation To Limit Nitrogen Oxides Emissions From Large Non-Electric Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the District of Columbia Department of Energy and Environment (DOEE). This revision caps emissions of nitrogen oxides (NO_x) from large non-electric generating units (non-EGUs) to meet the requirements of EPA's NO_x SIP Call. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before December 21, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2015-0666 by one of the following methods:

- A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.
- B. *Email*: fernandez.cristina@epa.gov.
- C. *Mail*: EPA-R03-OAR-2015-0666, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. *Hand Delivery*: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2015-0666. 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 email. 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 email comment directly to EPA without going through *www.regulations.gov*, your email 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.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in *www.regulations.gov* or may be viewed during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of Energy and Environment, Air Quality Division, 1200 1st Street NE., 5th Floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814-2308, or by email at powers.marilyn@epa.gov.

SUPPLEMENTARY INFORMATION: On June 19, 2015, DOEE submitted, as a revision to its SIP, a regulation to limit NO_x emissions from the non-EGUs in the District that are subject to EPA's NO_x SIP call.

I. Background

On October 27, 1998 (63 FR 57356), EPA issued a finding that required 22 states and the District of Columbia to submit SIPs to address the regional transport of ground level ozone that was significantly contributing to nonattainment or interfering with maintenance for the 1-hour and 8-hour ozone NAAQS in downwind areas, known as the NO_x SIP Call. The October 27, 1998 rulemaking action established

a model trading rule under 40 CFR part 96 that states could adopt to comply with the reduction requirements of the NO_x SIP Call, commonly referred to as the NO_x Budget Trading Program (NBTP). The NBTP established under the NO_x SIP Call applied to electric generating units (EGUs) greater than 25 megawatts electric (25 MWe) and non-EGUs (large industrial boilers and turbines) with a maximum rated heat input capacity greater than 250 million British thermal units per hour (mmbtu/hr). To comply with the NO_x SIP Call, the District submitted a SIP revision that incorporated by reference the 40 CFR part 96 model trading rule. On November 1, 2001 (66 FR 55099), the revision was approved into the District of Columbia SIP.

On May 12, 2005 (70 FR 25162), EPA promulgated the Clean Air Interstate Rule (CAIR), which required 28 states and the District of Columbia to reduce NO_x and sulfur dioxide (SO₂) emissions that were significantly contributing to downwind nonattainment and interfering with maintenance of the 1997 8-hour ozone standard and the 1997 fine particulate matter (PM_{2.5}) annual standard. The May 12, 2005 rulemaking established model trading rules for EGUs that states could adopt to comply with their reduction obligations under CAIR. The NO_x SIP Call requirements continued to apply, and the CAIR model trading rules included a CAIR NO_x ozone season trading program that was coordinated with the NO_x SIP Call, replacing the NBTP as it applied to EGUs for those states that chose to participate in the CAIR trading program. In addition, as part of their CAIR SIP, states had the option of expanding the applicability provisions of the CAIR NO_x ozone season trading program to include the non-EGUs that were trading under the NBTP. Thus, a state that elected to have non-EGUs participate in the CAIR NO_x ozone season trading program would meet its NO_x SIP Call obligations for both the EGUs and non-EGUs that were formerly trading under the NBTP through the CAIR trading program.

On April 28, 2006 (71 FR 25328), EPA promulgated Federal implementation plans (FIPs) for all States covered by CAIR in order to ensure that the emission reductions required by CAIR were achieved on schedule. The CAIR FIPs, which applied only to EGUs, required participation in the CAIR trading programs. The CAIR FIP trading programs imposed essentially the same requirements as, and were integrated with, the respective CAIR SIP trading programs. Thus a state subject to the CAIR FIP would be meeting its NO_x SIP

Call requirements with respect to its EGUs. Upon approval of a SIP revision implementing CAIR, a state's CAIR FIP would be withdrawn.

Subsequently, EPA discontinued the NBTP in 2008. The District of Columbia, however, did not submit a CAIR SIP. Therefore it became subject to the CAIR FIP in January 2009, and its NO_x SIP Call reductions for EGUs that were trading in the NBTP were met by the CAIR NO_x ozone season trading program under the FIP.¹ However, because the CAIR FIP did not have an option for inclusion of non-EGUs as trading participants, the District was required to submit a SIP revision to demonstrate compliance with its NO_x SIP Call state budget for non-EGUs, in accordance with 40 CFR part 51.121.

II. Summary of SIP Revision

On June 19, 2015, DOEE submitted a SIP revision that addresses NO_x reductions from its non-EGUs to meet its obligations under the NO_x SIP Call. The submission removes, from the District's SIP, regulation Title 20 DCMR Chapter 10—Nitrogen Oxides Emissions Budget Program. Sections 1000 through 1013 of 20 DCMR Chapter 10 comprised the District's Ozone Transport Commission (OTC) NO_x Budget Program, which preceded the NO_x SIP Call trading program, and section 1014 incorporated by reference the NBTP. This submission replaces this regulation with revised Chapter 10—Air Quality—Non-EGU Limits on Nitrogen Oxides Emissions. The revised Chapter 10 regulation establishes a 25 ton ozone season NO_x emissions cap on applicable non-EGUs² in the District, and allocates the cap to the non-EGUs located at the U.S. General Services Administration Central (GSA) Heating and Refrigeration Plant, with a reallocation required whenever a new non-EGU in the District

becomes subject to the NO_x SIP Call. The regulation also requires continuous emissions monitoring (CEMs) of NO_x emissions, recordkeeping and reporting pursuant to 40 CFR part 75 to ensure compliance with the District's non-EGU emissions cap. The submission includes a revision to an associated definition and an abbreviation in the District's regulations to ensure consistency with NO_x SIP Call requirements. The submission also removes the obsolete requirements in 20 DCMR Chapter 10 for the OTC NO_x Budget Program because the program ended in 2003 upon the start of the EPA NBTP under the NO_x SIP Call.

Under section 110(l) of the CAA, EPA may not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement under section 110 of the CAA. EPA finds the proposed removal of the regulations for the discontinued OTC and NO_x SIP Call trading programs from the District's SIP will not interfere with attainment or reasonable further progress of any NAAQS nor interfere with any other applicable CAA requirement. First, the revision to the SIP merely removes outdated provisions from the SIP (*i.e.*, the NBTP and OTC program) which are no longer effective. Second, the District's emissions budget under the NO_x SIP Call was more stringent than the budget under the OTC NO_x Budget Program thus providing for greater NO_x reductions and protection of the NAAQS so removal of the OTC program has no effect on the NAAQS. Likewise, the CAIR NO_x Ozone Season trading program budget was designed to replace the NBTP for EGUs and was more stringent than the NO_x SIP Call budget, thus providing greater NO_x reductions and protection of the NAAQS than the NBTP. As the District no longer has any EGUs subject to the NO_x SIP Call nor to CSAPR which replaced CAIR, removal of the NBTP from the SIP has no effect on NO_x emissions in the District. Finally, approval of this proposed SIP revision will maintain the NO_x emission reduction requirements of the NO_x SIP Call for the District's non-EGUs and allow the District to meet its remaining NO_x SIP Call emissions budget. As the District no longer has any EGUs, the District has no further obligations under CSAPR, CAIR or the NO_x SIP Call regarding EGUs. Therefore, removal of the previous trading programs from the District's SIP does not interfere with attainment or reasonable further progress on any NAAQS nor interfere

with any applicable requirement under section 110 of the CAA.

III. Proposed Action

EPA's review of this material indicates that the submittal is adequate to address the emission reduction requirements of the non-EGUs under the NO_x SIP Call and is in accordance with requirements in CAA section 110 and its implementing regulations. EPA is proposing to approve the District of Columbia SIP revision, submitted on June 19, 2015, that establishes a 25 ton ozone season NO_x emissions cap for non-EGUs in the District. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this proposed rulemaking action, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revised District of Columbia regulation Title 20 DCMR, Environment, Chapter 10—Air Quality—Non-EGU Limits on Nitrogen Oxides Emissions, and the revised definition of "Fossil fuel-fired" in Chapter 1, General Rules. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or may be viewed at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

¹ On January 1, 2015, the trading programs under the Cross-State Air Pollution Rule (CSAPR) replaced the trading programs under CAIR. EPA had promulgated CSAPR to replace CAIR after the D.C. Circuit remanded CAIR to EPA in 2008. See *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008). See also 76 FR 48208 (August 8, 2011) (promulgating CSAPR). After litigation on the merits of CSAPR, EPA began implementing CSAPR in 2015. See *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). See also 79 FR 71663 (December 3, 2014) (interim final rulemaking adjusting CSAPR's implementation dates). CSAPR does not apply to the District of Columbia. The District has no EGUs meeting the applicability criteria under CSAPR since the only EGU in the District permanently shut down in 2012. With this shut down, the District therefore also no longer has any EGU obligations under the NO_x SIP Call.

² Applicable non-EGUs are the non-EGUs that were subject to the NO_x SIP Call, including large industrial boilers and turbines with a maximum rated heat input capacity greater than 250 mmbtu/hr.

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action proposing approval of the District of Columbia regulation to limit NO_x emissions from non-EGUs subject to the NO_x SIP Call and approval of a related definition and abbreviation, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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.

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

Dated: November 6, 2015.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2015–29369 Filed 11–18–15; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 151027997–5997–01]

RIN 0648–BF48

Control Date for the Trawl Limited Access Fishery for Yellowfin Sole in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking (ANPR); control date.

SUMMARY: At the request of the North Pacific Fishery Management Council (Council), this document announces a control date of October 13, 2015, that may be used as a reference date for a future management action to limit future access to the offshore sector of the Bering Sea and Aleutian Islands (BSAI) trawl limited access fishery for yellowfin sole. This date corresponds to the date the Council announced its intent to evaluate participation and effort in response to a public request to consider further limits on access to the offshore sector of the BSAI trawl limited access fishery for yellowfin sole. This document is intended to promote awareness of possible rulemaking and provide notice to the public that any participation in the offshore sector of the BSAI trawl limited access fishery for yellowfin sole after the control date may not ensure continued access to that fishery under a future management action. This document is also intended to discourage speculative entry into the fishery while the Council considers whether and how access to the fishery may be further limited under a future management action.

DATES: October 13, 2015, shall be known as the control date for the offshore sector of the BSAI trawl limited access fishery for yellowfin sole and may be used as a reference for participation in a future management action that is consistent with the Council's objectives and applicable Federal laws.

FOR FURTHER INFORMATION CONTACT: Rachel Baker: 907–586–7228 or rachel.baker@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the U.S. exclusive economic zone (EEZ) of the BSAI under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The Council

prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

This advance notice of proposed rulemaking would apply to owners and operators of vessels that participate in the Federal fishery for yellowfin sole with trawl gear in the offshore sector of the BSAI. The BSAI is defined at § 679.2 and shown in Figure 1 to 50 CFR part 679.

Vessels that participate in the offshore sector of the BSAI trawl limited access fishery for yellowfin sole include catcher vessels, catcher/processors, and motherships. Catcher vessels participate in the offshore sector by delivering yellowfin sole to catcher/processors or motherships for processing. Catcher/processors participate in the offshore sector by catching and processing yellowfin sole or by receiving and processing deliveries of yellowfin sole from catcher vessels. Motherships participate in the offshore sector by receiving and processing deliveries of yellowfin sole from catcher vessels. This advance notice of proposed rulemaking would not apply to owners and operators of trawl catcher vessels that participate in the inshore sector of the BSAI trawl limited access fishery for yellowfin sole, *i.e.*, vessels that deliver yellowfin sole to shoreside processors rather than to catcher/processors or motherships.

The Council and NMFS annually establish biological thresholds and annual total allowable catch limits for groundfish species, such as yellowfin sole, to sustainably manage the groundfish fisheries in the BSAI. To achieve these objectives, NMFS requires vessel operators participating in BSAI groundfish fisheries to comply with various regulatory restrictions, such as fishery closures, to maintain catch within specified total allowable catch limits. The BSAI groundfish fishery restrictions also include prohibited species catch (PSC) limits for Pacific halibut that generally require halibut to be discarded when harvested. When harvest of halibut PSC reaches the specified halibut PSC limit for that fishery, NMFS closes directed fishing for the target groundfish species, even if the total allowable catch limit for that species has not been harvested. The Council and NMFS have long sought to control fishing effort in the North Pacific Ocean to ensure that fisheries are conservatively managed and do not exceed established biological