



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2016-0092; FRL-9961-57-Region 1]

Air Plan Approval; Rhode Island; Repeal of NO_x Budget Trading Program

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision removes Air Pollution Control (APC) Regulation 41, entitled "NO_x Budget Trading Program" (Rhode Island NBP) from the Rhode Island SIP. The Rhode Island NBP was a market-based cap and trade program, which was created to reduce emissions of nitrogen oxides (NO_x) from power plants and other large combustion sources in response to EPA's 1998 NO_x SIP Call. By 2009, EPA's Clean Air Interstate Rule (CAIR) had effectively replaced NO_x Budget Trading Programs in eastern states. CAIR has since been replaced by the Cross-State Air Pollution Rule (CSAPR), which was first implemented on January 1, 2015. Rhode Island was not covered by CAIR or CSAPR. The State's NBP was repealed under state law effective July 29, 2014. The five sources meeting the Rhode Island NBP applicability criteria have Title V permits, which contain SIP-

derived NO_x emissions limits, that limit their NO_x emissions below the maximum emissions (936 tons) that were allowed under the Rhode Island NBP and, therefore, the requirements of the NO_x SIP Call are satisfied by the emissions limits contained in those sources' permits. This renders Regulation 41 unnecessary. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective [**insert date 60 days after date of publication in the Federal Register**], unless EPA receives adverse comments by [**insert date 30 days after date of publication in the Federal Register**]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2016-0092 at <http://www.regulations.gov>, or via email to arnold.anne@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is

considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912, telephone number (617) 918-1684, fax number (617) 918-0684, email simcox.alison@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose

- II. EPA's Evaluation of Rhode Island's SIP Revision
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background and Purpose

On October 6, 2014, Rhode Island submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a request to remove from its SIP Air Pollution Control (APC) Regulation 41, entitled "NO_x Budget Trading Program" (Rhode Island NBP). The regulation is no longer needed as the subject facilities' Title V permits, which contain SIP-derived NO_x emissions limits, collectively contain maximum allowable emission limitations (682 tons) that are significantly lower than the 936-ton limit in the EPA-approved Rhode Island NBP. In addition, any new sources that would be constructed are subject to the state's new source review program, which has been approved by EPA into the Rhode Island SIP (64 FR 67500; December 2, 1999).

Rhode Island's NBP was a market-based cap and trade program, which was created to reduce emissions of NO_x from power plants and other large combustion sources in response to EPA's NO_x SIP Call (63 FR 57356; October 27, 1998). The NO_x SIP call originally required 22 States, including Rhode Island, and the District of Columbia to meet statewide NO_x emission budgets during each ozone season (May 1 to

October 1) beginning in 2003. In February 1999, Rhode Island, Massachusetts, and Connecticut signed a memorandum of understanding agreeing to distribute the Electric Generating Unit (EGU) portions of the three states' budgets amongst themselves. Therefore, Rhode Island's SIP submittal for its Regulation 41 "NO_x Budget Trading Program" (Rhode Island NBP) to meet NO_x SIP Call requirements was approved at the same time as those from Massachusetts and Connecticut (65 FR 81743; December 27, 2000).

Sources covered by the Rhode Island NBP include sources with a nameplate capacity greater than 15 megawatts electric (MWe) or with a maximum design heat input greater than 250 million British thermal units per hour (MMBtu/hr). The five sources meeting the NBP applicability criteria are Ocean State Power, Pawtucket Power Associates, Dominion Energy Manchester Street, Inc., Tiverton Power Inc., and Entergy Rhode Island State Energy, L.P. The EPA-approved Rhode Island NBP set the total NO_x emission budget for all applicable sources for each control period (i.e., the May through October ozone season) at 936 tons.

In May 2005, EPA issued the Clean Air Interstate Rule (CAIR) (70 FR 25162; May 12, 2005), which covered 27 eastern states and the District of Columbia. CAIR used a cap and trade program to reduce sulfur dioxide (SO₂) and NO_x emissions from power plants and other

large combustion sources to meet the 1997 annual and 24-hour fine particle (PM_{2.5}) and 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). By 2009, CAIR had replaced NBPs for CAIR states. CAIR was subsequently replaced by the Cross-State Air Pollution Rule (CSAPR) (76 FR 48208; August 8, 2011). CSAPR implementation began on January 1, 2015. EPA revised the CSAPR ozone-season NO_x program by issuing an update to CSAPR for the 2008 ozone NAAQS, known as the CSAPR Update (81 FR 74504; October 26, 2016). The CSAPR Update will largely replace the original CSAPR ozone-season NO_x program on May 1, 2017. Rhode Island was not covered by CAIR, CSAPR, or the CSAPR Update. However, neither CAIR nor CSAPR preempted or replaced the underlying requirements of the NO_x SIP Call and, therefore, Rhode Island remains subject to those requirements.

In order for Rhode Island to be able to remove its NBP from the SIP, the state has demonstrated that its total NO_x emission limitation under its NBP (936 tons during each ozone-season control period) would be retained. As noted earlier, all of the sources meeting the Rhode Island NBP applicability criteria have Title V permits, which contain SIP-derived NO_x emissions limits, that collectively limit their allowable NO_x emissions to amounts below 936 tons, and these sources also remain subject to adequate monitoring, recordkeeping and reporting requirements.

On April 7, 2014, Rhode Island Department of Environmental Management (RI DEM) proposed to repeal APC Regulation No. 41 "NO_x Budget Trading Program" and offered the public an opportunity to schedule a public hearing on or before May 8, 2014. No requests for a public hearing were requested, and repeal of this regulation under state law became effective on July 29, 2014. On October 6, 2014, RI DEM submitted a SIP revision to EPA to remove APC Regulation No. 41 from the Rhode Island SIP.

II. EPA's Evaluation of Rhode Island's SIP Revision

EPA has reviewed the Title V permits, and NO_x emissions limits contained therein, for the five sources that meet the Rhode Island NBP applicability criteria: Ocean State Power, Pawtucket Power Associates, Dominion Energy Manchester Street, Inc., Tiverton Power Inc., and Entergy Rhode Island State Energy, L.P. These permits, which include emissions limits, and a technical support document (TSD) supporting EPA's evaluation are available in the docket for today's action.

The maximum allowable NO_x emissions from the five Rhode Island sources during any ozone-season control period under the Title V permits were calculated using the following conservative assumptions: (1) all units are operating at maximum capacity; and (2) all units are operating at all times throughout the ozone

season. As detailed in the TSD, the maximum allowable NO_x emissions were calculated to be 682 tons, well below the 936 tons allowed under the Rhode Island NBP. These calculated emissions were also compared to these sources' actual emissions during 2016, the most recent year for which emissions data is available from EPA's Clean Air Markets at <https://ampd.epa.gov/ampd/>. A spreadsheet showing this data is included in the docket for today's action. Actual 2016 ozone-season NO_x emissions for the five sources were 221 tons, significantly below both the 682 tons allowed under the Title V permits and the 936 tons allowed under the Rhode Island NBP. Therefore, the state has been meeting, and will continue to meet, the requirements of the NO_x SIP Call.

Furthermore, as Rhode Island is meeting the requirements of the NO_x SIP call through the implementation of the facilities' permitted NO_x emissions limits, removing APC Regulation No. 41 from the Rhode Island SIP will not interfere with any applicable requirement concerning attainment of the NAAQS, reasonable further progress, or any other applicable Clean Air Act requirement; i.e., the SIP revision meets the Clean Air Act's section 110(1) anti-backsliding requirements. In addition, any new sources that would be constructed would be subject to the state's new source review program which has been approved by EPA into the Rhode Island SIP (64

FR 67500; December 2, 1999). Accordingly, EPA is approving the removal of APC Regulation No. 41 from the Rhode Island SIP.

III. Final Action

EPA is approving Rhode Island's request, submitted to EPA on October 6, 2014, to remove from the Rhode Island SIP APC Regulation No. 41 "NO_x Budget Trading Program."

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective **[insert date 60 days after date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[insert date 30 days after date of publication in the Federal Register]**.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed

rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[insert date 60 days after date of publication in the Federal Register]** and no further action will be taken on the proposed rule. 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. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Clean Air Act. 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 action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- 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 (Public Law 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 Clean Air Act; 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 23, 2017.

Deborah A. Szaro,
Acting Regional Administrator,
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart OO-Rhode Island

§ 52.2070 [Amended]

2. In §52.2070, in the table in paragraph (c), remove the entry "Air Pollution Control Regulation 41".

[FR Doc. 2017-08655 Filed: 4/28/2017 8:45 am; Publication Date: 5/1/2017]