§ 52.1375 Control strategy: Lead.

Determination—EPA has determined that the East Helena Lead nonattainment area has attained the lead national ambient air quality standards through calendar year 1999. This determination is based on air quality data currently in the AIRS database (as of the date of our determination, June 18, 2001).

4. In § 52.1384 add paragraph (b) to read as follows:

§ 52.1384 Emission control regulations.

* * * * *

(b)(1) In 40 CFR 52.1370(c)(51), we incorporated by reference several documents that comprise the East Helena Lead SIP. Sections 52.1370(c)(51)(i)(B) and (C) indicate that certain provisions of the documents that were incorporated by reference were excluded. The excluded provisions of § 52.1370(c)(51)(i)(B) and (C) are disapproved. These provisions are disapproved because they do not entirely conform to the requirement of section 110(a)(2) of the Act that SIP limits must be enforceable, nor to the requirement of section 110(i) that the SIP can be modified only through the SIP revision process. The following phrases, words, or section in exhibit A of the stipulation between the Montana Department of Environmental Quality (MDEQ) and Asarco, adopted by order issued on June 26, 1996 by the Montana Board of Environmental Review (MBER), are disapproved:

(i) The words, ''or an equivalent procedure'' in the second and third sentences in section 2(A)(22) of exhibit A;

(ii) The words, ''or an equivalent procedure'' in the second and third sentences in section 2(A)(28) of exhibit A;

(iii) The words, ''or an equivalent procedure'' in the second sentence in section 5(G) of exhibit A;

(iv) The sentence, ''Any revised documents are subject to review and approval by the Department as described in section 12,'' from section 6(E) of exhibit A;

(v) The words, ''or a method approved by the Department in accordance with the Montana Source Testing Protocol and Procedures Manual shall be used to measure the volumetric flow rate at each location identified,'' in section 7(A)(2) of exhibit A;

(vi) The sentence, ''Such a revised document shall be subject to review and approval by the Department as described in section 12,'' in section 11(C) of exhibit A;

(vii) The sentences, ''This revised Attachment shall be subject to the review and approval procedures outlined in Section 12(B). The Baghouse Maintenance Plan shall be effective only upon full approval of the plan, as revised. This approval shall be obtained from the Department by January 6, 1997. This deadline shall be extended to the extent that the Department has exceeded the time allowed in section 12(B) for its review and approval of the revised document,'' in section 12(A)(7) of exhibit A; and

(viii) Section 12(B) of exhibit A.

(2) Paragraphs 15 and 16 of the stipulation by the MDEQ and Asarco adopted by order issued on June 26, 1996 by the MBER are disapproved. Paragraph 20 of the stipulation by the MDEQ and American Chemet adopted by order issued on August 4, 1995 by the MBER is disapproved.

* * * * *

Dated: October 22, 2001.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

[FR Doc. 01–27278 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC 050–2027a; FRL–7094–7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a revision to the District of Columbia (the District) State Implementation Plan (SIP). This 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.'' 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 approve the District'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 the District had failed to submit a SIP response to the NO_X SIP Call, thus starting the 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. On May 21, 2001, the District of Columbia submitted its NO_X Budget Trading Program in response to the NO_X SIP Call. EPA found that SIP submission complete on June 8, 2001, thereby halting the sanctions clocks. Upon approval of this SIP revision, both the sanctions clocks and EPA's FIP obligation are fully terminated.

DATES: This rule is effective on December 31, 2001 without further notice, unless EPA receives adverse written comment by December 3, 2001. 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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

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 21, 2001, the Government of the District of Columbia, Department of Health submitted a revision to its SIP to address the requirements of the NO_X SIP Call. The revision consists of the adoption of Chapter 10—Nitrogen Oxides Budget Trading Program. 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 Guidance Did EPA Use to Evaluate the District's Submittal?

II. The District's NO_X Budget Trading Program
A. When Did the District Submit the SIP Revision to EPA in Response to the NO_X SIP Call?
B. What Is the District's NO_X Budget Trading Program?
C. What Is the Result of EPA's Evaluation of the District'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 District of Columbia NO_X Budget Trading Program submitted as a SIP revision on May 21, 2001. 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 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 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 of 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 the District of Columbia'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 of the major issues. *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. March 3, 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 in the near future. 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 NO_X SIP Call rule. EPA does not anticipate that the District of Columbia will have any additional reductions requirements pursuant to 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 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.

D. What Guidance Did EPA Use To Evaluate the District'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 part 51.121–22 to evaluate the District's NO_X Budget Trading Program.

II. The District's NO_X Budget Trading Program

A. When Did the District Submit the SIP Revision to EPA in Response to the NO_X SIP Call?

On May 21, 2001, the Government of the District of Columbia, Department of Health submitted a revision to its SIP to address the requirements of the NO_X SIP Call.

B. What Is the District's NO_X Budget Trading Program?

The District's SIP revision to address the requirements of the NO_X SIP Call consists of the adoption and submittal of Chapter 10—Nitrogen Oxides Budget Trading Program. The District of Columbia NO_X Budget Trading Program establishes and requires a NO_X allowance trading program for large electric generating and industrial units. Chapter 10—NO_X Budget Trading Program establishes a NO_X cap and allowance trading program with a budget of 233 tons of NO_X for the ozone seasons of 2003 and beyond. The District has adopted, by reference, the requirements of the July 1, 2000 edition of 40 CFR part 96, subpart A (NO_X Budget Trading Program General Provisions), subpart B (Authorized Account Representative for NO_X Budget Sources), subpart C (Permits), subpart D (Compliance Certification), subpart E (NO_X Allowance Allocations), subpart F (NO_X Allowance Tracking System), Subpart G (NO_X Allowance Transfers), Subpart H (Monitoring and Reporting), and subpart I (Individual Opt-ins) and 40 CFR part 97, Appendix A (Final Section 126 Rule: EGU Allocations, 2003–2007), Appendix B (Final Section 126 Rule: Non-EGU Allocations 2003–2007), Appendix C (Final Section 126 Rule: Trading Budget, 2003–2007), and Appendix D (Final Section 126 Rule: State Compliance Supplement Pool for the Section 126 Rule (Tons)). Therefore, pursuant to 40 CFR 51.121(p)(1), the District's SIP revision is automatically approved as satisfying its portion of NO_X emission reductions.

Under the NO_X Budget Trading Program, the District allocates NO_X allowances to the EGUs and non-EGUs units that are affected by these requirements. Because the District's NO_X Budget Trading Program is based upon EPA's model rule, the District of Columbia sources are allowed to participate in the interstate NO_X allowance trading program that EPA will administer for the participating states. The NO_X trading program applies to all fossil fuel fired EGUs with a nameplate capacity equal to or greater than 25 MW 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).

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

EPA has evaluated the District's May 21, 2001 SIP submittal and finds it approvable. The District of Columbia 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 the District's NO_X Budget Trading Program approvable. The May 21, 2001 submittal will strengthen the District's SIP for reducing ground level ozone by providing NO_X reductions beginning in 2003.

On December 26, 2000 (65 FR 81366), EPA made a finding that the District 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) with 24 months. The effective date of that finding was January 25, 2001. On

May 21, 2001, the District submitted a SIP revision to satisfy the NO_X SIP Call. EPA found that SIP submission complete on June 8, 2001, thus, halting the sanctions clocks.

III. Final Action

EPA is approving the District's NO_X Budget Trading Program, submitted as a SIP revision on May 21, 2001. EPA finds that the District's NO_X Budget Trading Program is fully approvable because it satisfies 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 December 31, 2001 without further notice unless EPA receives adverse comment by December 3, 2001. 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 (Public Law 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 December 31, 2001. 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 the District of Columbia 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 24, 2001.

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 J—District of Columbia

2. In § 52.470, the table in paragraph (c) is amended by adding the entry under Chapter 10 in numerical order for Section 1014 to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DISTRICT OF COLUMBIA SIP

State citation	Title/subject	State effective date	EPA approval date	Additional Explanation
*	*	*	*	*
Chapter 10—Nitrogen Oxides Emissions Budget Program				
*	*	*	*	*
Section 1014	NO_X Budget Trading Program For State Implementation Plans.	May 1, 2001	November 1, 2001.	
*	*	*	*	*

[FR Doc. 01–27376 Filed 10–31–01; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0038,CO–001–0065;FRL–7093–7]

Clean Air Act Determination of Attainment for PM_{10} Nonattainment Areas; Montana and Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing determinations of attainment for the particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM_{10}) national ambient air quality standards (NAAQS) for the Whitefish, Montana, Thompson Falls, Montana and Steamboat Springs, Colorado moderate PM_{10} nonattainment areas. The Whitefish, Montana