

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06-OAR-2005-TX-0011; FRL-7955-9]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Attainment Demonstration of the Austin Early Action Compact Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Chairman of the Texas Commission on Environmental Quality (TCEQ) on December 6, 2004. The revisions demonstrate attainment and maintenance of the 8-hour ozone standard and incorporate the Austin Early Action Compact (EAC) Clean Air Action Plan (CAAP) into the Texas SIP. EPA is approving the photochemical modeling in support of the attainment demonstration for the 8-hour ozone standard within the Austin EAC area. EPA is approving the Austin EAC CAAP, which includes control measures and demonstrates maintenance of the standard through 2012. These actions strengthen the SIP in accordance with the requirements of sections 110 and 116 of the Federal Clean Air Act (the Act) and will result in emission reductions needed to help ensure attainment and maintenance of the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone.

DATES: This final rule is effective on September 19, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Materials in EDocket (RME) ID No. R06-OAR-2005-TX-0011. All documents in the docket are listed in the RME index at <http://docket.epa.gov/rmepub/>; once in the system, select "quick search," then type in the appropriate RME docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information the disclosure of which 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 either electronically in RME or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made

available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below, or Mr. Bill Deese at 214-665-7253, to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cents per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT:

Carrie Paige, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-6521, paige.carrie@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, wherever "we," "our," and "us" is used, we mean EPA.

Outline

- I. Background
- II. What Action Is EPA Taking?
- III. What Comments Did EPA Receive on the May 23, 2005 Proposed Rulemaking for Austin?
- IV. Final Action
- V. Statutory and Executive Order Reviews

I. Background

On May 23, 2005, EPA proposed approval of the Austin EAC area's CAAP, the photochemical modeling in support of the attainment and maintenance demonstration and related control measures, including a vehicle inspection and maintenance (I/M) program, as revisions to the SIP submitted to EPA by the TCEQ. The photochemical modeling demonstrates that the specified control measures will provide for attainment of the 8-hour ozone standard by December 31, 2007 and maintenance of the standard through 2012. The proposal provides a detailed description of these revisions and the rationale for EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period for these actions closed on June 22, 2005. See the Technical Support Documents or our proposed rulemaking at 70 FR 29461 for more information. No comments were received on EPA's proposed approval of

the I/M Program and therefore, that portion of the proposal is addressed in a separate rulemaking (70 FR 45542, published August 8, 2005). Three comments, one of which is adverse, were received on EPA's proposed approval of the Austin EAC area's CAAP and 8-hour ozone attainment demonstration for the EAC area.

II. What Action Is EPA Taking?

Today we are approving revisions to the Texas SIP under sections 110 and 116 of the Act. The revisions demonstrate attainment and maintenance of the 8-hour ozone standard within the Austin EAC area. The revisions include the Austin EAC CAAP, photochemical modeling and related control measures. The intent of the SIP revisions is to reduce ozone pollution and thereby maintain the 8-hour ozone standard.

III. What Comments Did EPA Receive on the May 23, 2005 Proposed Rulemaking for Austin?

We received three comment letters on the May 23, 2005 proposed rulemaking. The comments provided both supportive and adverse discourse.

Comment: Two comment letters support EPA's approval of the EAC SIP revisions and the third letter commends the State of Texas for steps it has taken to improve air quality.

Response: We appreciate the support expressed towards the State of Texas and towards the efforts made to ensure that the citizens in the Austin EAC area continue to breathe clean air. We continue to believe that the EAC program, as designed, gives Austin the flexibility to develop their own approach to maintaining the 8-hour ozone standard and believe Austin is serious in their commitment to control emissions from local sources. By involving diverse stakeholders, including representatives from industry, local and State governments, and local environmental and citizen groups, Austin is implementing regional cooperation in solving air quality problems that affect the health and welfare of its citizens. Through implementation of the CAAP, people living in the Austin EAC area will realize reductions in pollution levels and enjoy the health benefits of cleaner air sooner than might otherwise occur.

Comment: One letter contends that EPA lacks the authority to approve EACs and expressed opposition to the approval of the Austin SIP revision because, since the area experienced a violation of the 8-hour ozone standard, the SIP revision (1) provides for the deferment of the area's nonattainment

designation to as late as December 31, 2007, and (2) relieves the area of its obligations under Title I, Subpart D of the Act. The commenter contends that EPA does not have the legal authority to defer the effective date of an area's nonattainment designation nor to relieve areas of the obligations of Title I, Subpart D of the Act while areas are violating the standard and are designated nonattainment.

Response: In the April 2004 designation rule (69 FR 23858), the Austin EAC area was designated as attainment for the 8-hour ozone NAAQS. The commenter incorrectly asserts that approval of this SIP revision provides for deferment of the effective date of the area's nonattainment designation while the area is in violation of the 8-hour ozone standard. Nor does EPA's approval of this SIP alter the applicability of the redesignation provision of the Act. Section 107(d)(3)(A) provides that EPA may redesignate an area "on the basis of air quality data, planning and control considerations, or any other air quality-related considerations." Should the Austin EAC area experience a violation of the 8-hour ozone NAAQS, EPA would consider these statutory factors in determining whether to redesignate the area to nonattainment for the 8-hour ozone NAAQS. The commenter is incorrect that this SIP approval relieves the Austin EAC area of the requirements of Part D of Title I of the Act. These provisions apply to areas designated nonattainment. Because the Austin EAC area is designated attainment for the 8-hour ozone NAAQS, these provisions do not apply in the Austin EAC area.

IV. Final Action

EPA is approving the attainment demonstration, the Austin EAC CAAP, and the related control measures and we are incorporating these revisions into the Texas SIP. We have determined that the control measures included in the attainment demonstration are quantified, surplus, permanent, and are Federally enforceable once approved into the SIP. The modeling of ozone and ozone precursor emissions from sources in the Austin EAC area demonstrate that the specified control strategies will provide for attainment of the 8-hour ozone NAAQS by December 31, 2007 and maintenance of that standard through 2012. We have reviewed the CAAP and the attainment demonstration and determined that they are consistent with the requirements of the Act, EPA's policy, and the EAC protocol.

V. Statutory and Executive Order Reviews

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 and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, 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 under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C.

272 note), 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 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.*).

The Congressional Review Act, 5 U.S.C. section 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**. 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. section 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 October 18, 2005. 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 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, Intergovernmental relations, Nitrogen dioxides, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Dated: August 12, 2005.
Richard E. Greene,
Regional Administrator, Region 6.

■ 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 SS—Texas

■ 2. The second table in § 52.2270(e) entitled “EPA approved nonregulatory provisions and quasi-regulatory measures in the Texas SIP” is amended by adding a new entry, immediately

following the last entry in the table, to read as follows:

§ 52.2270 Identification of plan.

* * * * *
 (e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

| Name of SIP provision | Applicable geographic or nonattainment area | State submittal/effective date | EPA approval date | Comments |
|--|--|--------------------------------|--|----------|
| Clean Air Action Plan, 8-hour ozone standard attainment demonstration, and Transportation Emission Reduction Measures (TERMs) for the Austin EAC area. | Bastrop, Caldwell, Hays, Travis and Williamson Counties, TX. | 12/06/04 | 8/19/05 [Insert FR page number where document begins]. | |

[FR Doc. 05–16490 Filed 8–18–05; 8:45 am]
 BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0009; FRL–7956–1]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Clean Air Action Plan and Attainment Demonstration for the Northeast Texas Early Action Compact Area; Agreed Orders Regarding Control of Air Pollution for the Northeast Texas Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Texas State Implementation Plan (SIP) submitted on July 18, 2002 and December 6, 2004. Approval will incorporate the following changes into the SIP: the Clean Air Action Plan (CAAP), a demonstration of attainment and maintenance for the 8-hour ozone national ambient air quality standard (NAAQS) in the Northeast Texas Early Action Compact (EAC) area, and the associated control measures. EPA is approving the photochemical modeling in support of the attainment demonstration for the 8-hour ozone standard within the Northeast Texas EAC area. These actions strengthen the SIP in accordance with sections 110 and 116 of the Federal Clean Air Act (CAA) and will result in emission reductions needed to help ensure attainment and maintenance of the 8-hour ozone NAAQS in Northeast Texas.

DATES: This rule is effective on September 19, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Materials in EDocket (RME) Docket ID No. R06–OAR–2005–TX–0009. All documents in the docket are listed in the Regional Materials in EDocket (RME) index at <http://docket.epa.gov/rmepub/>; once in the system, select “quick search,” then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information the disclosure of which 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 either electronically in RME or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cents per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air

Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–6645; fax number 214–665–7263; e-mail address young.carl@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever “we” “us” or “our” is used, we mean the EPA.

Outline

- I. What Action Is EPA Taking?
- II. What Comments Did EPA Receive on the May 16, 2005 Proposed Rulemaking for Northeast Texas?
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

Today we are approving the two revisions submitted by the State on July 18, 2002, and December 6, 2004, into the Texas SIP that pertain to Northeast Texas under sections 110 and 116 of the CAA. The revisions demonstrate continued attainment and maintenance of the 8-hour ozone standard within the Northeast Texas EAC area. The 2004 revision includes the CAAP and the photochemical modeling. The 2002 revision pertains to the related control measures relied upon in the modeling and are Agreed Orders regarding control of air pollution for the Northeast Texas area by (1) American Electric Power Company, (2) TXU Generation Company LP and (3) Eastman Chemical Company.