

[FR Doc. E9-618 Filed 1-14-09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2006-0357; FRL-8761-4]

#### Approval and Promulgation of Air Quality Implementation Plans; Texas; Approval of the Section 110(a)(1) Maintenance Plan for the 1997 8-Hour Ozone Standard for El Paso County

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving a revision to the Texas State Implementation Plan (SIP). The revision consists of a maintenance plan for El Paso County developed to ensure continued attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) through the year 2014. The Maintenance Plan meets the statutory and regulatory requirements, and is consistent with EPA's guidance. EPA is approving the revision pursuant to section 110 of the Federal Clean Air Act (CAA).

**DATES:** This rule is effective on March 16, 2009 without further notice, unless EPA receives relevant adverse comment by February 17, 2009. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2006-0357, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *EPA Region 6 "Contact Us" Web site:* <http://epa.gov/region6/r6coment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

- *E-mail:* Mr. Guy Donaldson at [donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov). Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.

- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section

(6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2006-0357. 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](http://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](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://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 e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail 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 docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) 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 cent 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:** Jeffrey Riley, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-8542; fax number 214-665-7263; e-mail address [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, whenever "we" "us" or "our" is used, we mean the EPA.

#### Outline

- I. What Is the Action EPA Is Taking?
- II. What Is the Background for This Action?
- III. What Is EPA's Analysis of the State's Submittal?
- IV. What Preconstruction Permitting Program Applies in the Area?
- V. Final Action
- VI. Statutory and Executive Order Reviews

#### I. What Is the Action EPA Is Taking?

EPA is approving a revision to the Texas SIP. The revision is a 1997 8-hour ozone NAAQS maintenance plan for El Paso County. The State of Texas, through the Texas Commission on Environmental Quality (TCEQ), submitted the 1997 8-hour ozone NAAQS maintenance plan for El Paso County to EPA on January 20, 2006. EPA is approving the maintenance plan SIP revision for El Paso County as meeting the requirements of CAA Section 110(a)(1) and EPA's regulations under 40 CFR 51.905(c) and (d) and being consistent with EPA guidance. The maintenance plan is designed to help keep the El Paso area in attainment for the 8-hour ozone NAAQS through the year 2014.

#### II. What Is the Background for This Action?

Under the 1990 CAA Amendments, El Paso County continued to be designated nonattainment for the 1-hour ozone NAAQS by operation of law and was

classified as a serious nonattainment area (see 56 FR 56694). El Paso County has unique considerations for ozone attainment planning due to airshed contributions from Ciudad Juarez, Mexico. Under Section 179B of the Act, the EPA approved the 1-hour ozone standard attainment demonstration SIP for El Paso County on June 10, 2004 (see 69 FR 32450). TCEQ established to the EPA's satisfaction that implementation of the plan would achieve timely attainment of the 1-hour ozone NAAQS

but for emissions emanating from Ciudad Juarez. EPA also found the El Paso area would attain by November 15, 1996, earlier than the attainment deadline of November 15, 1999. Due to this finding, and the State's enforceable commitment to perform basin-wide modeling whenever the necessary Juarez information became available, the requirement for a post-1996 plan with an additional 9 percent of reductions from November 1996 through November

1999 was deferred. This approval of the section 179B attainment demonstration SIP and deferral of the post-1996 plan was contingent; valid only as long as the area's modeling data continued to show that the El Paso 1-hour ozone area would be in attainment of the 1-hour NAAQS, but for emissions from outside the United States.

TCEQ submitted all the other requirements for a 1-hour ozone nonattainment area classified as serious and EPA approved them as follows:

Description	Date of approval	Federal Register Notice
15% Rate of Progress (ROP) Plan .....	November 10, 1998 .....	63 FR 62943.
1990 base year Emissions Inventory .....	November 8, 1994 .....	59 FR 55589.
Periodic Inventory .....	Most Recent: December 2, 2004 (letter from TCEQ).	
Emissions Statements .....	August 26, 1994 .....	59 FR 44036.
Enhanced I/M .....	August 22, 1994, revised .....	59 FR 43046.
	November 14, 2001 .....	66 FR 57261.
VOC Reasonably Available Control Technology (RACT) .....	March 7, 1995, revised .....	60 FR 12438.
	October 1996 .....	61 FR 55897.
	January 7, 1999 .....	64 FR 3841.
	March 15, 1999 .....	64 FR 12759.
	December 22, 1999 .....	64 FR 71666.
	September 5, 2000 .....	65 FR 53595.
	December 20, 2000 .....	65 FR 79745.
	July 16, 2001 .....	66 FR 36913.
New Source Review (NSR) .....	September 27, 1995 .....	60 FR 49781.
Offset requirement .....	October 30, 1996 .....	61 FR 55894.
Reid Vapor Pressure .....	March 7, 1995 .....	60 FR 12438.
Stage II Vapor Control .....	April 15, 1994, revised .....	59 FR 17940.
	March 29, 2005 .....	70 FR 15769.
Clean Fuel Vehicle Program .....	February 7, 2001 .....	66 FR 9203.
Transportation Control Measures .....	November 10, 1998 .....	63 FR 62943.
Enhanced Monitoring .....	October 4, 1994 .....	59 FR 50504.
Failure-to-meet ROP and attainment contingency measures ...	May 22, 1997 .....	62 FR 27964.
NO <sub>x</sub> Waiver .....	November 28, 1994 .....	59 FR 60714.

On April 30, 2004, EPA designated and classified areas for the 1997 8-hour ozone NAAQS (69 FR 23858), and published the final Phase 1 rule for implementation of the 1997 ozone NAAQS (69 FR 23951). El Paso County was designated as unclassifiable/attainment for the 1997 ozone standard, effective June 15, 2004 (see 69 FR 23858). Consequently, this attainment area is required to submit a 10-year maintenance plan under section 110(a)(1) of the CAA and the Phase 1 rule. On May 20, 2005, EPA issued guidance providing information regarding how a state might fulfill the maintenance plan obligation established by the Act and the Phase 1 rule (Memorandum from Lydia N. Wegman to Air Division Directors, *Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of Clean Air Act, May 20, 2005*). On January 20, 2006, Texas submitted a 1997 8-hour ozone standard maintenance plan for El Paso County to EPA. This SIP revision satisfies the

section 110(a)(1) CAA requirements for a plan that provides for implementation, maintenance, and enforcement of the 1997 8-hour ozone NAAQS in the El Paso County unclassifiable/attainment area.

On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit issued an opinion that vacated EPA's Phase 1 Implementation Rule for the 1997 8-Hour Ozone Standard. (*South Coast Air Quality Management District. v. EPA*, 472 F.3d 882 (DCCir. 2006)). Petitions for rehearing were filed with the Court, and on June 8, 2007, the Court modified the scope of the vacatur of the Phase 1 rule. See 489 F.3d 1245 (DC Cir. 2007), *cert. denied*, 128 S.Ct. 1065 (2008). The Court vacated those portions of the Rule that provide for regulation of the 1997 8-hour ozone NAAQS nonattainment areas under Subpart 1 in lieu of Subpart 2 and that allowed areas to revise their SIPs to no longer require certain programs as they applied for purposes of the 1-hour NAAQS; new source

review, section 185 penalties, and contingency plans for failure to meet RFP and attainment milestones. Consequently, the Court's modified ruling does not alter any requirements under the Phase 1 implementation rule for the 1997 8-hour ozone NAAQS for maintenance plans.

The Phase 1 Rule also provided that for an area like El Paso, any outstanding obligations to provide SIP revisions concerning attainment demonstration and Rate of Progress (ROP) Plan for the 1-hour ozone NAAQS would no longer be required as long as the area continues to maintain the 8-hour standard. If the 8-hour standard is violated prior to the area having an approved 8-hour maintenance plan under section 110(a)(1), the area would be required to submit a SIP revision to address the deferred post-1996 ROP plan. The area is not violating either the 1-hour or 8-hour standard, and upon the effective date of our approval of the 8-hour ozone maintenance plan, there no longer will be a potential outstanding requirement

to submit a 1-hour ozone post-1996 ROP Plan for the El Paso 1-hour ozone nonattainment area.<sup>1</sup>

**III. What Is EPA's Analysis of the State's Submittal?**

On January 20, 2006, the State of Texas submitted a SIP revision containing a maintenance plan for the 1997 ozone NAAQS for El Paso County. The January revision provides a 1997 ozone NAAQS maintenance plan, as required by section 110(a)(1) of the CAA and the provisions of EPA's Phase 1 Implementation Rule (see 40 CFR 51.905(a)(4)). The purpose of the plan is to ensure continued attainment and maintenance of the 1997 ozone NAAQS in El Paso County.

In this action, EPA is approving the State's maintenance plan for the 1997 ozone NAAQS for the area of El Paso County because EPA finds that the TCEQ submittal meets the requirements of section 110(a)(1) of the CAA, EPA's rule, and is consistent with EPA's guidance. As required, the plan provides for continued attainment and maintenance of the 1997 ozone NAAQS in the area for 10 years from the effective date of the area's designation as unclassifiable/attainment for the 1997 ozone NAAQS, and includes components illustrating how the area will continue in attainment of the 1997 ozone NAAQS and contingency measures. Each of the section 110(a)(1) plan components is discussed below.

(a) Attainment Inventory—The TCEQ developed comprehensive inventories of VOC and NO<sub>x</sub> emissions from area,

stationary, and mobile sources using 2002 as the base year to demonstrate maintenance of the 1997 ozone NAAQS for El Paso County. The year 2002 is an appropriate year for the TCEQ to base attainment level emissions because States may select any one of the three years on which the 8-hour attainment designation for the 1997 ozone NAAQS was based (2001, 2002, and 2003). The State's submittal contains the detailed inventory data and summaries by source category. The 2002 base year inventory is a good choice. Using the 2002 inventory as a base year reflects one of the years used for calculating the air quality design values on which the 8-hour ozone designation decisions were based. It also is one of the years in the 2002–2004 period used to establish baseline visibility levels for the regional haze program.

A practical reason for selecting 2002 as the base year emission inventory is that Section 110(a)(2)(B) of the CAA and the Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) require States to submit emissions inventories for all criteria pollutants and their precursors every three years, on a schedule that includes the emissions year 2002. The due date for the 2002 emissions inventory is established in the rule as June 2004. In accordance with these requirements, the State of Texas compiles a statewide EI for point sources on an annual basis. For stationary point sources, for El Paso County, the TCEQ provided estimates for each commercial or industrial operation that emits 50 tons or more per

year of VOC or NO<sub>x</sub> in Appendix B of the maintenance plan. This data is quality assured and entered into the State of Texas Air Reporting System (STARS). Projections for 2008 and 2014 were developed using the August 2005 Texas Industrial Production Index (TIPI) derived growth factors, supplemented with Economic Growth Analysis System version 4.0 (EGAS 4.0). Stationary non-point source data was grown by using EGAS 4.0, and On-road mobile emissions of VOC and NO<sub>x</sub> were estimated using EPA's MOBILE6.2 motor vehicle emissions factor computer model. Non-road mobile projections were developed with EPA's NONROAD model, with the exception of aircraft, airport ground support equipment, and locomotives. For these categories, the 2002 Periodic Emissions Inventory was grown to 2008 and 2014 using EGAS 4.0 growth factors, and the Federal Aviation Administration's Dispersion Modeling System (EDMS) model was used to develop aircraft emissions projections. EPA finds that the TCEQ prepared the 2002 base year emissions inventories and projected data to the years 2008 and 2014, for the area consistent with EPA's long-established guidance memoranda.

The following table provides VOC and NO<sub>x</sub> emissions data for the 2002 base attainment year inventory, as well as projected VOC and NO<sub>x</sub> emission inventory data for the years 2008 and 2014. Please see the Technical Support Document (TSD) for additional emissions inventory data including projections by source category.

VOC AND NO<sub>x</sub> EMISSIONS INVENTORY BASELINE (2002) AND PROJECTIONS (2008 AND 2014)

Emissions	2002 tons per day	2008 tons per day	2014 tons per day
Total VOC .....	52.44	47.53	44.61
Total NO <sub>x</sub> .....	60.87	49.01	36.89

As shown in the Table above, total VOC and total NO<sub>x</sub> emissions for El Paso County are expected to decrease over the 10-year period of the maintenance plan. Please see the TSD for more information on EPA's analysis and review of the State's methodologies, modeling data and performance, etc. for developing the base and attainment year inventories. The State has demonstrated that the future year 1997 8-hour ozone emissions will be less than the 2002 base attainment year's emissions. The

attainment inventories submitted by the TCEQ for this area are consistent with the criteria as discussed in the EPA Maintenance Plan Guidance memo dated May 20, 2005 and in other guidance documents (please see the docket for additional information). EPA finds that the future emissions levels in 2008 and 2014 are expected to be less than emissions levels in 2002.

(b) Maintenance Demonstration—The primary purpose of a maintenance plan is to demonstrate how an area will

continue to remain in compliance with the 1997 ozone standard for the 10 year period following the effective date of designation as unclassifiable/attainment. The end projection year is 10 years from the effective date of the attainment designation for the 1997 ozone NAAQS, which for El Paso County was June 15, 2004. Therefore, the plan must demonstrate attainment through 2014. As discussed in section (a) Attainment Inventory above, Texas has identified the level of ozone-forming

<sup>1</sup> Monitors in El Paso County currently reflect attainment of the 1-hour ozone NAAQS (2002–2004 data). The State, however, did not submit a request for redesignation of the area to attainment for the

1-hour ozone standard and a section 175A maintenance plan. Because the area was never redesignated to attainment, the area must continue to meet the 1-hour ozone serious area applicable

requirements (see 40 CFR 51.905(a)(3) and Section IV).

emissions in El Paso County that was consistent with attainment of the NAAQS for ozone in 2002. Texas has projected VOC and NO<sub>x</sub> emissions for the years 2008 and 2014 in El Paso County and EPA finds that the future emissions levels in those years are expected to be below the emissions levels in 2002. Please see the TSD for more information on EPA's review and evaluation of the State's methodologies, modeling, inputs, etc., for developing the 2008 and 2014 projected emissions inventories.

This demonstration shows compliance and maintenance of the 1997 8-hour ozone standard by assuring that current and future emissions of VOC and NO<sub>x</sub> remain at or below attainment or baseline EI of 2002. The year 2002 was chosen as the baseline year because it is one of the most recent three years (*i.e.*, 2002, 2003, and 2004) for which the El Paso area has clean air quality data for the 8-hour ozone standard. It includes future inventory projected years for 2008 and 2014. The plan identifies an "out year," at least 10 years after the effective date of classification. EPA finds that the future emissions levels in 2008 and 2014 are expected not to exceed the emissions levels in 2002.

(c) Monitoring Network—The State of Texas has committed in its maintenance plan to continue operation of an appropriate ozone monitoring network and to work with EPA in compliance with 40 CFR part 58 with regard to the continued adequacy of such a network, if additional monitoring is needed, and when monitoring can be discontinued.

In El Paso County, there are six monitoring sites, each of which has monitored attainment with the 1997 ozone standard from 2002 through 2007. The 1997 ozone NAAQS is 0.08 parts per million based on the three-year average of the fourth-highest daily maximum 8-hour average ozone concentration measured at each monitor within an area. The 1997 ozone standard is considered to be attained at 84 parts per billion (ppb). The three most recent 8-hour ozone design values for El Paso County are 76 ppb for 2005, 78 ppb for 2006, and 79 ppb for 2007.

(d) Contingency Plan—The section 110(a)(1) maintenance plan includes contingency provisions to correct promptly any violation of the 1997 ozone NAAQS that occurs. The contingency indicator is based upon monitoring data. The triggering mechanism for activation of a contingency measures is a monitoring violation of the 1997 8-hour ozone standard. In the maintenance plan, if contingency measures are triggered,

TCEQ is committing to implement the measures as expeditiously as practicable but no longer than 24 months following the trigger. Because the area can be influenced by transport from outside the area (*e.g.*, emissions from Mexico), the State will notify the EPA if the violation was caused by actions outside TCEQ's jurisdiction.

The following contingency measures are identified for implementation:

- Vent gas control.
- Control of emissions from degassing or cleaning of stationary, marine, and transport vehicles.
- Control of emissions from petroleum dry cleaning systems.
- Other measures deemed appropriate at the time because of advances in control technologies.

These contingency measures and schedules for implementation satisfy EPA's long-standing guidance on the requirements of section 110(a)(1) of Continued Attainment. Based on the above, we find that the contingency measures provided in the State's El Paso 8-hour Ozone maintenance plan are sufficient and meet the requirements of section 110(a)(1) of the CAA.

(e) Verification of Continued Attainment—Texas commits to track the progress of the maintenance plan by continuing to periodically update the EI. It will compare the updated EIs against the projected 2008 and 2014 EIs. In addition, Texas commits to verify the 8-hour ozone status through appropriate ambient air quality monitoring, and to quality assure air quality monitoring data according to federal requirements.

#### IV. What Preconstruction Permitting Program Applies in the Area?

As discussed previously in Section II, although the monitoring data shows that the area is meeting both the 1-hour and 8-hour ozone standards, the State did not submit a request for redesignation of the area to attainment for the 1-hour ozone standard before EPA revoked this standard. Because the area was never redesignated to attainment for the 1-hour standard, the area must continue to meet the applicable 1-hour ozone serious area measures. These mandatory measures include the serious nonattainment area NSR permitting program.

40 CFR 51.905(a)(3) 8-Hour NAAQS Attainment/1-Hour NAAQS Nonattainment of EPA's Phase 1 implementation rule, however, provides that the State may request that the Nonattainment New Source Review program no longer apply in an area such as El Paso. If the State submits to EPA a request to remove the NNSR program from the El Paso Ozone SIP and replace

it with the State's prevention of significant deterioration (PSD) SIP, a section 110(l) demonstration would need to be included with the request.

If Texas chooses to submit such a request, the request must include all necessary supporting elements, *e.g.*, a section 110(l) demonstration, any necessary regulatory revisions. Please note that the Texas PSD SIP requirements would apply in the El Paso ozone area only upon the effective date of an EPA action approving the removal from the El Paso ozone SIP of the NNSR SIP program.

#### V. Final Action

Pursuant to section 110 of the Act, EPA is approving the 1997 8-hour ozone maintenance plan for El Paso County. We have evaluated the State's submittal and have determined that it meets the applicable requirements of the Clean Air Act and EPA regulations, and is consistent with EPA policy.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on March 16, 2009 without further notice unless we receive adverse comment by February 17, 2009. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### VI. 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 CAA. 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. Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Because this rule merely approves a state rule implementing a Federal standard, EPA lacks the discretionary authority to modify today’s regulatory decision on the basis of environmental justice considerations.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. 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 CAA. 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.*).

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 16, 2009. 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, Incorporation by reference, Intergovernmental relations, Ozone, Nitrogen dioxides, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 31, 2008.

**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. In § 52.2270, the second table in paragraph (e) entitled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP,” is amended by adding an entry at the end of 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
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
El Paso County 1997 8-Hour Ozone Maintenance Plan.	El Paso, TX .....	1/11/06	1/15/09	[Insert FR page number where document begins].

■ 3. Section 52.2275 is amended by adding a new paragraph (g) to read as follows:

**§ 52.2275 Control strategy and regulations: Ozone.**

\* \* \* \* \*

(g) Approval. The Texas Commission on Environmental Quality (TCEQ) submitted a 1997 8-hour ozone NAAQS maintenance plan for the area of El Paso County on January 20, 2006. The area is designated unclassifiable/attainment for

the 1997 8-hour ozone standard. EPA determined this request for El Paso County was complete on June 13, 2006. The maintenance plan meets the requirements of section 110(a)(1) of the Clean Air Act and is consistent with

EPA's maintenance plan guidance document dated May 20, 2005. The EPA therefore approved the 1997 8-hour ozone NAAQS maintenance plan for the area of El Paso County on January 15, 2009.

[FR Doc. E9-708 Filed 1-14-09; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL-8762-7]

#### Finding of Failure To Submit State Implementation Plans Required by the 1999 Regional Haze Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is taking a final action finding that 37 states, the District of Columbia, and the U.S. Virgin Islands have failed to submit for EPA review and approval State Implementation Plans (SIPs) for improving visibility in the nation's national parks and wilderness areas. Under the Clean Air Act (CAA) and EPA's implementing regulations, states were required to submit these SIPs to EPA by December 17, 2007. These SIPs must contain a number of elements, including importantly: For each mandatory Class I federal area in a state, reasonable progress goals providing for an improvement in visibility for the most impaired days and ensuring no degradation in visibility for the least impaired days; a long-term strategy for improving visibility, including enforceable emissions limitations, for meeting the reasonable progress goals; and Best Available Retrofit Technology

(BART) determinations for certain older existing stationary sources. By this action, the EPA is making a finding of failure to submit for those states that have not submitted a SIP or have submitted a SIP that addresses only part of the requirements.

**DATES:** *Effective Date:* This action is effective on January 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** General questions concerning this notice should be addressed to Mr. Todd Hawes, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code: C539-04, 109 TW Alexander Drive, Research Triangle Park, NC 27709; telephone (919) 541-5591.

**SUPPLEMENTARY INFORMATION:** For questions related to a specific state please contact the appropriate regional office:

Regional offices	States
Anne Arnold, Manager, Air Quality Planning Unit, EPA New England, 1 Congress Street, Suite 1100 (CAQ), Boston, MA 02114-2023.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007-1866.	New Jersey, New York, Virgin Islands.
Christina Fernandez, Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2187.	District of Columbia, Maryland, Pennsylvania, Virginia.
Dick A. Schutt, Chief, Air Planning Branch, EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth, Street, SW., 12th Floor, Atlanta, GA 30303.	Florida, Georgia.
Jay Bortzer, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
Tom Diggs, Associate Director Air Programs, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733.	Oklahoma, New Mexico, Texas.
Joshua A. Tapp, Chief, Air Programs Branch, EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101-2907.	Kansas, Nebraska.
Monica S. Morales, Unit Chief, Air Quality Planning Unit, EPA Region VIII Air Program, 1595 Wynkoop St. (8P-AR), Denver, CO 80202-1129.	Colorado, Montana, North Dakota, South Dakota, Wyoming.
Lisa Hanf, Chief, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.	Arizona, California, Hawaii, Nevada.
Mahbubul Islam, Manager, State and Tribal Air Programs, EPA Region X, Office of Air, Waste, and Toxics, Mail Code OAQ-107, 1200 Sixth Avenue, Seattle, WA 98101.	Alaska, Idaho, Oregon, Washington.

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## I. Background

In CAA section 169A, Congress declared as a national goal the prevention of any future, and the remedying of any existing, impairment

of visibility in mandatory class I Federal areas (Class I areas)<sup>1</sup> which impairment results from manmade air pollution. EPA's visibility regulations, codified at 40 CFR 51.300-51.309, require states to develop regional haze SIPs with measures necessary to make reasonable progress towards remedying visibility impairment in Class I areas. The required SIP elements include: (1) For states with one or more Class I areas, the

<sup>1</sup> Areas designated as mandatory Class I Federal areas are those national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks which were in existence on August 7, 1977. Visibility has been identified as an important value in 156 of these areas. See 40 CFR part 81, subpart D.