



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2017-0192; FRL-9971-04-Region 6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Emissions

Banking and Trading Programs for Area and Mobile Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the Texas State Implementation Plan (SIP) Emissions Banking and Trading Programs submitted on October 10, 2017. Specifically, we are approving revisions that clarify and expand the existing provisions for the generation and use of emission credits from area and mobile sources.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2017-0192. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Adina Wiley, 214-665-2115,

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SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our June 8, 2017 proposal (82 FR 26634). In that document we proposed to approve via parallel processing the proposed revisions to the Texas Emissions Banking and Trading Programs for the generation and use of emission credits from area and mobile sources. We preliminarily determined that the proposed revisions were consistent with the CAA and the EPA’s regulations and guidance for emissions trading.

Under the EPA’s “parallel processing” procedure, the EPA proposes a rulemaking action on a proposed SIP revision concurrently with the State’s public review process. If the State’s proposed SIP revision is not significantly changed, the EPA will finalize the rulemaking on the SIP revision as proposed after responding to any submitted comments. Final rulemaking action by the EPA will occur only after the final SIP revision has been fully adopted by the TCEQ and submitted formally to the EPA for approval as a revision to the Texas SIP. See 40 CFR part 51, Appendix V.

The TCEQ completed their state rulemaking process and adopted revisions on September 20, 2017. The TCEQ submitted these adopted changes as a revision to the Texas SIP on October 10, 2017. The EPA has evaluated the State’s final SIP revision for any changes made from the time of proposal. Our evaluation indicates that the TCEQ made two types of revisions at adoption. First, the TCEQ made several non-substantive revisions to correct grammar, internal cross-references, and citations consistent with the *Texas Register* formatting guidance. The EPA

has evaluated these non-substantive revisions and determined that they do not make any material changes to the regulations we proposed to approve. The TCEQ also made several substantive revisions at adoption that the EPA has evaluated and classified as logical outgrowth from our proposal. The EPA's evaluation of the adopted revisions is included in the "Addendum to the Technical Support Document" for EPA-R06-OAR-2017-0192, available in the rulemaking docket.

The EPA is proceeding with our final approval of the October 10, 2017, revisions to the Texas SIP, consistent with the parallel processing provisions in 40 CFR Part 51, Appendix V. We did not receive any comments regarding our proposal. As such, we are proceeding with our final approval because the submitted final regulations adopted by the state do not alter our rationale for proposal presented in our June 8, 2017 proposed rulemaking.

II. Final Action

The EPA has determined that the October 10, 2017, revisions to the Texas SIP are consistent with the CAA and the EPA's policy and guidance on emissions trading. Therefore, under section 110 of the Act, the EPA approves the following revisions to the Texas SIP that were adopted on September 20, 2017, and submitted to the EPA on October 10, 2017:

- Revisions to 30 TAC Section 101.300;
- Revisions to 30 TAC Section 101.302;
- Revisions to 30 TAC Section 101.303;
- Revisions to 30 TAC Section 101.304;
- Revisions to 30 TAC Section 101.306;

- Revisions to 30 TAC Section 101.370;
- Revisions to 30 TAC Section 101.372;
- Revisions to 30 TAC Section 101.373;
- Revisions to 30 TAC Section 101.374; and
- Revisions to 30 TAC Section 101.376.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 6 Office (please contact Adina Wiley for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation (62 FR 27968, May 22, 1997).

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, the 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 1, 2017.

Samuel Coleman,
Acting Regional Administrator, Region 6.

40 CFR part 52 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 SS – Texas

2. In §52.2270(c) the table titled “EPA Approved Regulations in the Texas SIP” is amended by revising the entries for Sections 101.300, 101.302, 101.303, 101.304, 101.306, 101.370, 101.372, 101.373, 101.374, and 101.376 to read as follows:

§52.2270 Identification of plan.

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(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/Submitt al date	EPA approval date	Explanation
* * * * *				
Chapter 101 – General Air Quality Rules				
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Subchapter H – Emissions Banking and Trading				
Division 1 – Emission Credit Program				
Section 101.300	Definitions	09/20/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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Section 101.302	General Provisions	09/20/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.303	Emission Reduction Credit Generation and Certification	09/20/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.304	Mobile Emission Reduction Credit Generation and Certification	09/20/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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Section 101.306	Emission Credit Use	09/20/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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Division 4 – Discrete Emission Credit Program				
Section 101.370	Definitions	09/20/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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Section 101.372	General Provisions	09/20/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.373	Discrete Emission Reduction Credit Generation and Certification	09/20/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
Section 101.374	Mobile Discrete Emission Reduction Credit Generation and Certification	09/20/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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Section 101.376	Discrete Emission Credit Use	09/20/2017	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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