



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2020-0300; FRL-10019-45-Region 6]

Air Plan Approval; Texas; Reasonable Further Progress Plan for the Houston-Galveston-Brazoria Ozone Nonattainment Area

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) to meet the Reasonable Further Progress (RFP) requirements for the Houston-Galveston-Brazoria (HGB) serious ozone nonattainment area for the 2008 ozone National Ambient Air Quality Standard (NAAQS). Specifically, EPA is approving the RFP demonstration and associated Motor Vehicle Emission Budgets (MVEBs), and a revised 2011 base year emissions inventory (EI) for the HGB area. EPA is also notifying the public of the status of EPA's adequacy determination for the MVEBs for the HGB area. EPA is not finalizing the proposed approval of revisions to the SIP to address contingency measure requirements in the HGB area for the 2008 Ozone NAAQS at this time.

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-2020-0300. All documents in the docket are listed on the <https://www.regulations.gov> website. 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. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Carrie Paige, EPA Region 6 Office, Infrastructure & Ozone Section, 214-665-6521, paige.carrie@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

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 September 29, 2020 proposal (85 FR 60928). In that action we proposed to approve only the HGB portion of the May 13, 2020, Texas SIP submittal that addressed RFP requirements for the 2008 8-hour ozone NAAQS for the two serious ozone nonattainment areas in Texas (“the TCEQ submittal”). These two areas are the HGB and the Dallas-Fort Worth (DFW) areas. The TCEQ submittal also establishes MVEBs for the year 2020 and includes contingency measures for each of the HGB and DFW areas, should the areas fail to make reasonable further progress, or to attain the NAAQS by the applicable attainment date. The portion of the TCEQ submittal that refers to the DFW area will be addressed in a separate rulemaking action.¹

Our September 29, 2020 proposal provided a detailed description of the 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 October 29, 2020. We did not receive comments regarding our proposal. Therefore, with one exception, we are finalizing our action as proposed.

On January 29, 2021, the U.S. Court of Appeals for the District of Columbia Circuit (“DC Circuit”) issued a decision in response to challenges to EPA’s 2015 and 2018 rules implementing

¹ Our proposal to approve the RFP plan for the DFW area was published on October 9, 2020 (85 FR 64084). We have not issued a final rule for the DFW area.

the NAAQS for ozone, (80 FR 12264 (March 6, 2015) and 83 FR 62998 (December 6, 2018)). *Sierra Club, et al. v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021). Among the rulings in this decision, the DC Circuit vacated EPA's interpretation of the CAA to allow states to rely on already implemented control measures to meet the statutory requirements of section 172(c)(9) or 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS (see 83 FR 62998, 63026-27). The EPA is reexamining the contingency measures portion of the TCEQ submission for the HGB area in light of the DC Circuit decision. Therefore, we are not taking final action at this time on the contingency measures submitted as part of the May 13, 2020, TCEQ SIP submission for the HGB area included in the proposed action. EPA expects to address the contingency measures in a separate future action.

II. Final Action

We are approving revisions to the Texas SIP that address the RFP requirements for the HGB serious ozone nonattainment area for the 2008 ozone NAAQS. Specifically, we are approving the RFP demonstration and associated MVEBs, and the revised 2011 base year EI for the HGB area.

We are also notifying the public that EPA finds the newly established MVEBs for Nitrogen Oxides (NO_x) and Volatile Organic Compounds (VOC) for the HGB area adequate for the purpose of transportation conformity. Within 24 months from this final rule, the transportation partners will need to demonstrate conformity to the new NO_x and VOC MVEBs pursuant to 40 CFR 93.104(e)(3).

III. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. Accordingly, this action merely approves state

law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 30, 2021.

David Gray,
Acting Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 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(e), the table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding the entry “Reasonable Further Progress Plan (RFP), RFP Motor Vehicle Emission Budgets for 2020, and Revised 2011 Base Year Emissions Inventory” at the end of the table to read as follows:

§52.2270 Identification of plan.

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(e) * * *

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

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/ effective date	EPA approval date	Comments
* * * * *				
Reasonable Further Progress Plan (RFP), RFP Motor Vehicle Emission Budgets for 2020, and Revised 2011 Base Year Emissions Inventory	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, TX	3/4/2020	[Insert the date of publication in the Federal Register] [Insert Federal Register citation]	

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