ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2016–0611; FRL–10021–20–Region 6]

Air Plan Approval; Texas; Interstate Visibility Transport

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 disapproving elements of two State Implementation Plan (SIP) submissions from the State of Texas for the 2012 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) and the 2015 Ozone NAAQS. These submittals address how the existing SIP provides for implementation, maintenance, and enforcement of the 2012 $PM_{2.5}$ and 2015 Ozone NAAQS (infrastructure SIP or i-SIP). The i-SIP requirements are to ensure that the Texas SIP is adequate to meet the state's responsibilities under the CAA for these NAAQS. Specifically, this disapproval addresses the interstate visibility transport requirements of the i-SIP for the 2012 $PM_{2.5}$ and 2015 Ozone NAAQS under CAA section 110(a)(2)(D)(i)(II). In addition to this disapproval, we are finalizing our determination that the requirements of those i-SIP elements are met through the Federal Implementation Plans (FIPs) in place for the Texas Regional Haze program, and no further federal action is required.

DATES: This rule is effective on April 29, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2016–0611. 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: Jennifer Huser, EPA Region 6 Office, Regional Haze and SO_2 Section, 214–665–7347, *huser.jennifer@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. Please call or email 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 October 27, 2020 proposal (85 FR 68021). In that document, we proposed to disapprove the interstate visibility transport elements of two SIP submissions from the State of Texas: One for the 2012 $PM_{2.5}$ NAAQS and the other for 2015 Ozone NAAQS. We simultaneously proposed, in exercising our authority under section 110(c) of the Act, to find that the interstate visibility transport requirements that were intended to be addressed by those infrastructure SIPs are met through the Best Available Retrofit Technology (BART)-alternative FIPs already in place for the Texas Regional Haze program, and that no further action is required.

The public comment period for the proposed action closed on November 27, 2020. We received one public comment concerning our proposed action. The comment is included in the publicly posted docket associated with this action at *https://www.regulations.gov.* Below we provide a summary of the comment along with our detailed responses. After careful consideration, we have decided to finalize our action with no changes from the proposed action.

II. Response to Comments

Comment: The commenter raised concerns regarding the necessity of implementing a FIP and stated that a FIP is a good resource for states that are not complying with requirements for NAAQS set under the CAA. However, the commenter explains that Texas had submitted multiple SIPs in which requirements outside of the regional haze and visibility transport were met. The commenter asserts that the original regional haze SIP met EPA requirements when it was developed, but the D.C. Circuit remanded the Clean Air Interstate Rule (''CAIR'') which was a central part of Texas' SIP. The commenter further contends that when EPA replaced CAIR with the Cross-State Air Pollution Rule (''CSAPR''), the FIP imposed requirements on sources in Texas rather than allowing Texas to find the best method to utilize the new rule and submit a SIP revision. The commenter asserts that the final regional haze FIP imposed the trading program for SO_2 on specific Electric Generating Units (EGUs) and did not allow out-of-state trading. By the time the final regional haze FIP for Texas was issued in 2017, Texas could have proposed a revised SIP that satisfied the NAAQS requirements without targeting specific EGUs. The commenter concludes that just because CSAPR is better than BART does not mean it should be the only option.

Response: First, we note that comments regarding CAIR and CSAPR, as well as EPA's 2012 limited disapproval of the 2009 Texas Regional Haze SIP or EPA's obligation to promulgate a FIP to address the BART requirements for EGUs in Texas, are beyond the scope of this action, and as such, we will not be responding to them. However, because we are relying on the Texas regional haze FIP to fulfill the visibility transport requirements, we will address comments only as they are relevant to the current action. We agree with the commenter that Texas could have proposed a revised SIP to address the requirements. However, in response to court deadlines and without a revised Texas SIP submission, EPA was required to adopt a FIP to address BART. Texas may submit a SIP to replace the BART FIP at any point, including a SIP that includes an approach to implementing necessary emission reductions that is different from the trading program included in EPA's FIP, but the State has not done so to date.

EPA further notes that it is not implementing a new FIP in this action but is instead finding that an existing regional haze FIP also satisfies the interstate visibility transport requirements in CAA section 110(a)(2)(D)(i)(II). In our August 12, 2020 final rulemaking on Texas regional haze,[1] we affirmed our previous finding that Texas' participation in CSAPR to satisfy NO_X BART and our SO_2 intrastate trading program, as amended, fully addressed Texas' interstate visibility transport obligations for the following six NAAQS: (1) 1997 8-hour ozone; (2) 1997 $PM_{2.5}$ (annual and 24 hour); (3) 2006 $PM_{2.5}$ (24-hour); (4) 2008 8-hour ozone; (5) 2010 1-hour NO_2; and (6) 2010 1-hour SO_2. This action was based on our determination in the October 2017 FIP that the regional haze measures in place for Texas are adequate to ensure that emissions from the State do not interfere with measures to protect visibility in nearby states, because the emission reductions are consistent with the level of emissions reductions relied upon by other states during interstate consultation under 40

[1] 85 FR 156 (August 12, 2020).

CFR 51.308(d)(3)(i)–(iii) and when setting their reasonable progress goals.[2] The October 2017 FIP relies on CSAPR for ozone season NO_X as an alternative to EGU BART for NO_X, which exceeds the NO_X emission reductions and that other states relied upon during interstate consultation for the first planning period.[3] Similarly, the Texas SO_2 intrastate trading program ensures emission reductions consistent with and below the emission levels relied upon by other states during interstate consultation. Accordingly, consistent with our earlier finding that the October 2017 FIP results in emission reductions adequate to satisfy the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to visibility for the six NAAQS addressed by the August 12, 2020 rulemaking, we find that the FIP also satisfies these requirements with respect to the 2012 $PM_{2.5}$ and 2015 Ozone NAAQS.

Comment: The commenter raises concerns regarding the financial implications of the regional haze FIP, noting that, in October 2017 when the FIP was finalized, three of the Luminant coal-fired power plants listed in the FIP were announced to be shut down. The commenter states that the shutdown of the Big Brown Power plant was devastating to the small community in Freestone County, as the power plant was the largest employer in the area, providing over 200 jobs and $65 million in tax revenue for the small town. The commenter further speculates that while carbon capture technology may have been a future option for Luminant, the application of ''sudden'' legislation forced the shutdown, which may have been avoided had Texas developed a SIP that showed ''reasonable further progress'' and allowed a more stable adaptation or phase out for the effected facilities.

Response: We disagree with the commenter's assertion that the finalization of the October 2017 FIP correlated to the shutdown of Luminant's power plants, specifically Big Brown. According to Luminant's website, the plants were ''economically challenged in the competitive ERCOT market. Sustained low wholesale power prices, an oversupplied renewable generation market, and low natural gas prices, along with other factors, have contributed to this decision.'' [4] We also note that the FIP did not impose the addition of site-specific controls, but rather established an intrastate trading program with assurance provisions that resulted in an aggregate visibility impact from Texas EGU emissions under the trading program similar to, or less than, what would have been realized from Texas participation in the CSAPR SO_2 trading program. Finally, we note that Luminant/Vistra provided a comment letter in support of EPA's prior FIP action in October 2017, and the affirmation of that rule in August 2020.[5]

III. Final Action

The EPA is disapproving the interstate visibility transport elements of two SIP submissions from the State of Texas: One for the 2012 $PM_{2.5}$ NAAQS and the other for 2015 Ozone NAAQS. We simultaneously find, in exercising our authority under section 110(c) of the Act, that the interstate visibility transport requirements that were intended to be addressed by those infrastructure SIPs are met through the BART-alternative FIP already in place for the Texas Regional Haze program, and that no further action is required.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This final action is not a ''significant regulatory action'' was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This final action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely disapproves a SIP submission as not meeting the CAA.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will 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.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely disapproves a SIP submission as not meeting the CAA.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes the human health or environmental risk addressed by this action will not have potential

[2] See 2009 Texas Regional Haze SIP, section 4.3 titled ''Consultations On Class I Areas In Other States.'' The submittal can be found at *www.regulations.gov,* Docket ID EPA–R06–OAR–2016–0611, Document ID EPA–R06–OAR–2016–0611–0002.

[3] The 2018 EGU emission projections for NO_X used by CENRAP for Texas, which other states potentially impacted by emissions from Texas sources agreed upon during interstate consultation and relied on in their regional haze SIPs, were approximately 160,000 tons. In contrast, under the CSAPR ozone season NO_X trading program, Texas' 2017 NO_X ozone season budget is 52,301 tons of NO_X. See 81 FR 74504, 74508 (Oct. 26, 2016).

[4] *https://www.luminant.com/luminant-close-two-texas-power-plants/.*

[5] EPA–R06–OAR–2016–0611–0186 (January 2020) and EPA–R06–OAR–2016–0611–0162 (October 2018).

disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely disapproves a SIP submission as not meeting the CAA.

K. Congressional Review Act (CRA)

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. The 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).

L. Judicial Review

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 June 1, 2021. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Visibility transport.

Dated: March 19, 2021.

David Gray,

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. Amend § 52.2304 by revising paragraph (d) to read as follows:

§ 52.2304 Visibility protection.

* * * * *

(d) Portions of SIPs addressing noninterference with measures required to protect visibility in any other state are disapproved for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 1997 ozone, 2008 ozone, 2010 NO_2, 2010 SO_2, 2012 $PM_{2.5}$, and 2015 ozone NAAQS.

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[FR Doc. 2021–06135 Filed 3–29–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2020–0096; FRL–10015–36–Region 9]

Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; California; Infrastructure Requirements for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to partially approve and partially disapprove the state implementation plan (SIP) revisions submitted by the State of California pursuant to the requirements of the Clean Air Act (CAA or ''Act'') for the implementation, maintenance, and enforcement of the 2015 national ambient air quality standards (NAAQS or ''standards'') for ozone. Specifically, the EPA is approving the SIP revision for all elements except those that relate to prevention of significant deterioration (PSD). EPA is partially approving and partially disapproving three elements of the SIP revision due to PSD deficiencies in certain air pollution control or air quality management districts (APCD, AQMD, or ''district''). The disapprovals will not create any new consequences for these districts or the EPA as the districts are already subject to the EPA's federal PSD program at 40 CFR 52.21. As part of this action, we are also reclassifying certain regions of the State for emergency episode planning purposes with respect to ozone. We are also approving into the SIP two updated state provisions addressing CAA conflict of interest requirements for the entire state, and emergency episode plans for the Amador County APCD, Calaveras County APCD, Mariposa County APCD, Northern Sierra AQMD, and Tuolumne County APCD. Finally, we are approving an exemption from emergency episode planning requirements for ozone for the Lake County AQMD.

DATES: This rule is effective April 29, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2020–0096. 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 (CBI) 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 through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Panah Stauffer, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3247, or by email at *stauffer.panah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Background

A. Statutory Requirements

Section 110(a)(1) of the CAA requires each state to submit to the EPA, within three years after the promulgation of a