

of the security zone is unnecessary or impractical for the purpose of maritime security.

(g) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: December 16, 2010.

J.M. Nunan,

Captain, U.S. Coast Guard, Captain of the Port Honolulu.

[FR Doc. 2010-33120 Filed 12-30-10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2005-TX-0012;
FRL-9246-3]

Approval and Promulgation of Implementation Plans; Texas; Emissions Banking and Trading of Allowances Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving portions of four revisions to the Texas State Implementation Plan (SIP) that create and amend the Emissions Banking and Trading of Allowances (EBTA) Program. The EBTA Program establishes a cap and trade program to reduce emissions of oxides of nitrogen (NO_x) and sulfur dioxide (SO₂) from participating electric generating facilities. The Texas Commission on Environmental Quality (TCEQ) originally submitted the EBTA program to EPA as a SIP revision on January 3, 2000. Since that time, the TCEQ has submitted SIP revisions for the EBTA Program on September 11, 2000; July 15, 2002; and October 24, 2006. EPA has determined that these changes to the Texas SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Act.

DATES: This final rule will be effective February 2, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2005-TX-0012. All documents in the docket are listed in the <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 <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 related to this SIP revision, and which is part of the EPA docket, 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: If you have questions concerning today's final rule, please contact Ms. Adina Wiley (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-2115. Ms. Wiley can also be reached via electronic mail at wiley.adina@epa.gov.

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

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I. What final action is EPA taking?

We are fully approving severable portions of four revisions to the Texas State Implementation Plan (SIP) that create and amend the Emissions Banking and Trading of Allowances (EBTA) Program. The EBTA Program establishes a cap and trade program to reduce emissions of oxides of nitrogen (NO_x) and sulfur dioxide (SO₂) from participating electric generating facilities. The TCEQ originally submitted the EBTA program to EPA as

a SIP revision on January 3, 2000. Since that time, the TCEQ has submitted SIP revisions for the EBTA Program on September 11, 2000; July 15, 2002; and October 24, 2006.

EPA acted on the above SIP revisions through a direct final rulemaking and accompanying proposed rule action on November 16, 2010, at 75 FR 69884 and 75 FR 69909, respectively. In our direct final action we stated that we would withdraw our direct final approval if we received relevant adverse comments before December 16, 2010. Because EPA received one adverse comment, we withdrew our direct final action on December 15, 2010. As we discussed in our direct final and proposed rulemaking actions, we are proceeding with a final action and responding to the comments received in this notice. Today, we are approving the EBTA program and subsequent revisions as we proposed and find that they comply with the CAA and EPA regulations, are consistent with EPA policies, and will improve air quality. This final approval is being taken under parts C and D of the CAA.

II. What is the background for this action?

The TCEQ created the EBTA Program to implement the requirements of Texas Senate Bill 7 (SB 7), from the 76th Legislature, 1999, which deregulated the electric utility industry. Under Texas SB 7, TCEQ was required to develop a permitting system and a mass cap and trade system to distribute allowances for use by electric generating facilities. The EBTA program is designed to achieve a 50 percent reduction in NO_x emissions and a 25 percent reduction in SO₂ emissions, both based on 1997 heat input data, from participating sources. EPA has taken separate action on the permitting system required under Texas SB 7 and established at 30 TAC Chapter 116, Subchapter I (*See* docket EPA-R06-OAR-2005-TX-0031).

In our November 16, 2010, direct final action, we presented our evaluation of the EBTA program. Generally, SIP rules must be enforceable and must not relax existing requirements. *See* Clean Air Act sections 110(a), 110(l), and 193. EPA's review of the January 3, 2000; September 11, 2000; July 15, 2002; and October 24, 2006 SIP revisions finds that all 4 SIP submittals are consistent with the requirements at 40 CFR Part 51 and are considered complete SIP submittals in accordance with 40 CFR Part 51, Appendix V. This detailed analysis is available in the Technical Support Document (TSD) for this rulemaking. Additionally, we reviewed the EBTA program with respect to EPA's

Economic Incentive Program (EIP) Guidance “Improving Air Quality with Economic Incentive Programs” (EPA–452/R–01–001, January 2001) (EIP Guidance). Our analysis, as detailed in the TSD accompanying this rulemaking, finds that the EBTA program is consistent with the criteria for discretionary source specific emissions cap programs. The EBTA program will provide compliance flexibility to participating electric generating facilities in Texas and achieve the programmatic emission reduction goals of Texas SB 7. Further, EPA finds that the EBTA program is consistent with section 110(l) of the CAA and will not interfere with any applicable requirements concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act.

III. What are EPA’s responses to comments received on the proposed action?

EPA received one adverse comment on our proposed action, available in the docket. As discussed previously, because we received an adverse comment within the comment period, EPA withdrew our direct final rulemaking on December 15, 2010. We are proceeding with a separate final action on the EBTA program in this notice.

Comment 1: The comment EPA received states in its entirety: “No cap and trade other than through Congress!”

Response 1: The commenter did not provide any basis for why cap and trade should only be done through Congress or provide any specific comment on the EBTA program. There is nothing in the comment that convinces EPA that the EBTA program should not be approved. The Clean Air Act was enacted by Congress. 42 U.S.C.A. 7401. Under the Act, EPA is authorized to set clean air standards. 42 U.S.C.A. 7409. States are authorized to choose control strategies to meet these standards. 42 U.S.C.A. 7410(a). EPA can approve the strategies into State implementation plans, as long as the strategies are consistent with the Act. 42 U.S.C.A. 7410(l). As we stated in our proposal, and in section II of this notice, EPA finds the EBTA program to be consistent with the Act. EPA is making no changes to our proposed action as a result of this comment.

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, 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Pub. L. 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 Clean Air Act; 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, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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 March 4, 2011. 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 oxides, Ozone, Volatile organic compounds.

Dated: December 21, 2010.

Carl E. Edlund,

Acting 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 table in § 52.2270(c) entitled “EPA Approved Regulations in the Texas SIP” is amended by adding a new centered heading titled “Division 2—Emissions Banking and Trading of Allowances” immediately after the entry for Section 101.311 under Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, followed by new entries for sections 101.330, 101.331, 101.332, 101.333, 101.334, 101.335, 101.336, 101.338 and 101.339.

The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/submittal date	EPA approval date	Explanation
Chapter 101—General Air Quality Rules				
*	*	*	*	*
Subchapter H—Emissions Banking and Trading				
*	*	*	*	*
Section 101.311	Program Audits and Reports	11/10/04	9/6/06, 71 FR 52698.	
Division 2—Emissions Banking and Trading of Allowances				
Section 101.330	Definitions	12/16/1999	1/3/2011 [Insert <i>FR</i> page number where document begins].	
Section 101.331	Applicability	12/16/1999	1/3/2011 [Insert <i>FR</i> page number where document begins].	
Section 101.332	General Provisions	12/16/1999	1/3/2011 [Insert <i>FR</i> page number where document begins].	
Section 101.333	Allocation of Allowances	08/09/2000	1/3/2011 [Insert <i>FR</i> page number where document begins].	
Section 101.334	Allowance Deductions	12/16/1999	1/3/2011 [Insert <i>FR</i> page number where document begins].	
Section 101.335	Allowance Banking and Trading	12/16/1999	1/3/2011 [Insert <i>FR</i> page number where document begins].	
Section 101.336	Emission Monitoring, Compliance Demonstration, and Reporting.	12/16/1999	1/3/2011 [Insert <i>FR</i> page number where document begins].	
Section 101.338	Emission Reductions Achieved Outside the United States.	10/04/2006	1/3/2011 [Insert <i>FR</i> page number where document begins].	
Section 101.339	Program Audits and Reports	10/04/2006	1/3/2011 [Insert <i>FR</i> page number where document begins].	
*	*	*	*	*

[FR Doc. 2010-32968 Filed 12-30-10; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****44 CFR Part 65**

[Docket ID FEMA-2010-0003]

Changes in Flood Elevation Determinations**AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect

for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064, or (e-mail) luis.rodriquez1@dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice.

However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain