

attaining the 1997 PM<sub>2.5</sub> National Ambient Air Quality Standard (62 FR 38652, July 18, 1997). New York State's submittal included motor vehicle emissions budgets ("budgets") for 2009 for use by the State's metropolitan planning organizations in making transportation conformity determinations. On January 19, 2010, EPA posted the availability of the budgets on our Web site for the purpose of soliciting public comments. The comment period closed on February 18, 2010, and we received no comments.

Today's notice is simply an announcement of a finding that we have already made. EPA Region 2 sent a letter to New York State on October 15, 2010, stating that the 2009 motor vehicle emissions budgets in New York's SIP for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT PM<sub>2.5</sub> nonattainment area are adequate because they are consistent with the required attainment demonstration.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the National Ambient Air Quality Standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in 40 CFR 93.118(f). We have followed this rule in making our adequacy determination. The motor vehicle emissions budgets being found adequate today are listed in Table 1. EPA's finding will also be announced on EPA's conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>.

TABLE 1—2009 ATTAINMENT PM<sub>2.5</sub> MOTOR VEHICLE EMISSIONS BUDGETS FOR NEW YORK

[Tons per year]

Metropolitan Planning Organization	PM <sub>2.5</sub>	NO <sub>x</sub>
NYMTC (excluding Putnam County) and OCTC	1,750	77,571

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and record keeping requirements.

**Authority:** 42 U.S.C. 7401–7671q.

**Dated:** October 29, 2010.

**Judith A. Enck,**

*Regional Administrator, Region 2.*

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA–R06–OAR–2005–TX–0012; FRL–9226–2]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking a direct final action to approve 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<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) 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 direct final rule is effective on January 18, 2011 without further notice, unless EPA receives relevant adverse comment by December 16, 2010. 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 ID No. EPA–R06–OAR–2005–TX–0012, by one of the following methods:

- **www.regulations.gov:** Follow the on-line instructions for submitting comments.
  - **E-mail:** Mr. Jeff Robinson at [robinson.jeffrey@epa.gov](mailto:robinson.jeffrey@epa.gov). Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below.
  - **U.S. EPA Region 6 "Contact Us"** Web site: <http://epa.gov/region6/r6coment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.
  - **Fax:** Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), at fax number 214–665–6762.
  - **Mail:** Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
  - **Hand or Courier Delivery:** Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 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–2005–TX–0012. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> website is an "anonymous access" system, which means that 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 <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 along with any disk or CD-ROM submitted. 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 and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** 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 the disclosure of which 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 Permits Section (6PD-R), 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 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor 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 direct final action, 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](mailto:wiley.adina@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document, wherever any reference to "we," "us," or "our" is used, we mean EPA.

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#### **I. What Action is EPA Taking?**

We are taking direct final action to approve portions of four revisions to the Texas SIP submitted by the Texas Commission on Environmental Quality (TCEQ) on January 3, 2000; September 11, 2000; July 15, 2002; and October 24, 2006. These four revisions create and amend the Emissions Banking and Trading of Allowances Program at 30 Texas Administrative Code (TAC) Chapter 101, Subchapter H, Division 2. Specifically, we are approving through direct final action the adoption of 30 TAC sections 101.330-101.336, submitted on January 3, 2000; the revisions to 30 TAC section 101.333 submitted on September 11, 2000; the adoption of new 30 TAC section 101.338 submitted on July 15, 2002; and the revisions to 30 TAC section 101.338 and the adoption of new 30 TAC section 101.339 submitted on October 24, 2006. Our analysis as presented in this rulemaking action and the accompanying Technical Support Document finds these revisions to the Texas SIP to be consistent with the CAA, 40 CFR Part 51, and EPA's Economic Incentive Program Guidance, "Improving Air Quality with Economic Incentive Programs" (EPA-452/R-01-001, January 2001).

EPA's direct final approval of the EBTA program does not extend to the portions of the 4 SIP revisions that are not related to the EBTA program. Section II of this rulemaking action, titled "What Did Texas Submit?" further explains the state's SIP submittals and EPA's actions on the non-EBTA program provisions.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant 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 direct final rule will be effective on January 18, 2011 without further notice unless we receive relevant adverse comment by December 16, 2010. If we receive relevant 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.

#### **II. What did Texas submit?**

The TCEQ has submitted four SIP revisions concerning the EBTA Program. Below is an itemized listing of each of these submittals which details all sections submitted for EPA review and any rulemaking actions taken to date on these submissions.

##### *January 3, 2000*

- On December 16, 1999, the Texas Natural Resource Conservation Commission (TNRCC) (the predecessor agency to the TCEQ) adopted new provisions establishing the EBTA program, pursuant to Senate Bill 7, 76th Legislature, 1999 (SB 7). These new provisions created 30 TAC Chapter 101, Subchapter H, Division 2, Sections 101.330-101.337. Governor George W. Bush submitted these provisions as a SIP revision in a letter dated January 3, 2000, for rule log number 99033-116-AI.

- On December 16, 1999, TNRCC also adopted new provisions at 30 TAC Chapter 116, Sections 116.18, 116.910-116.914, 116.916, 116.920-116.922, 116.930, and 116.931 concerning the permitting of grandfathered electric generating facilities, also pursuant to Senate Bill 7. These provisions were also submitted to EPA on January 3, 2000, as part of rule project number 99033-116-AI.

- EPA is taking separate action on the provisions for the permitting of grandfathered electric generating facilities at 30 TAC Chapter 116, Sections 116.18, 116.910-116.914, 116.916, 116.920-116.922, 116.930, and

116.931.<sup>1</sup> See 75 FR 64235, October 19, 2010 at docket EPA–R06–OAR–2005–TX–0031.

#### September 11, 2000

- On August 9, 2000, the TNRCC adopted amendments to the EBTA program at 30 TAC Chapter 101, Subchapter H, Division 2, Section 101.333. Governor George W. Bush submitted these amendments as a SIP revision in a letter dated September 11, 2000, for rule log number 1999–029B–116–AI.

- On August 9, 2000, TNRCC also adopted amendments to 30 TAC Chapter 101, Subchapter A, Section 101.27 for revised emission fees calculations. The TNRCC also adopted amendments to 30 TAC Chapter 116, Sections 116.10, 116.110, 116.116, 116.603, 116.620, 116.621, 116.710, 116.715, 116.721, 116.722 and 116.750 pursuant to Senate Bill 766, 76th Legislature, 1999. All of these provisions were submitted to EPA on September 11, 2000, as part of rule log number 1999–029B–116–AI.

- On December 28, 2009, EPA returned the submittal of 30 TAC 101.27 to the Texas Commission on Environmental Quality (TCEQ) as part of the Title V Operating Permit Program rather than a Title I program that is implemented through the SIP. TCEQ submitted a letter on January 14, 2010, concurring with our assessment and withdrawing 30 TAC 101.27 from consideration as a SIP submittal.

- On November 14, 2003, EPA approved the amendments to 30 TAC Sections 116.110, 116.116, and 116.603. See 68 FR 64548.

- On April 14, 2010, EPA approved the amendments to 30 TAC Section 116.10(6) submitted on September 11, 2000. Also in this action EPA disapproved the amendments to 30 TAC Section 116.10(2) and took no action on 30 TAC Section 116.10(5)(F). See 75 FR 19468.

- On June 30, 2010, EPA issued a final disapproval of the Texas Flexible Permits Program, including disapproval of 30 TAC Sections 116.710, 116.715, 116.721, 116.722, and 116.750 submitted on September 11, 2000. See (75 FR 41312, July 15, 2010).

- The amendments to 30 TAC Section 116.620 remain open for review and action by EPA at a later date. EPA is

under a consent decree deadline to take final action no later than October 31, 2011.

- The amendments to 30 TAC Section 116.621 were repealed by the TCEQ on March 1, 2006, as part of Rule Project Number 2003–066–116–PR. No further action is needed by EPA on this section.

#### July 15, 2002

- On March 13, 2002, the TNRCC adopted new provisions in the EBTA Program for emission reductions achieved outside the United States at 30 TAC Chapter 101, Subchapter H, Division 2, Section 101.338. The Chairman of the TNRCC, Mr. Robert J. Huston, submitted this section as a SIP revision in a letter dated July 15, 2002, for rule project number 2001–063–101–AI.

- On March 13, 2002, the TNRCC also adopted revisions to the Emission Credit Banking and Trading Program (referred to elsewhere in this document as the Emission Reduction Credit (ERC) Program) at 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.302; the Mass Emissions Cap and Trade (MECT) Program at 30 TAC Chapter 101, Subchapter H, Division 3, Section 101.357, and the Discrete Emission Credit Banking and Trading Program (referred to elsewhere in this document as the Discrete Emission Reduction Credit (DERC) Program) at 30 TAC Chapter 101, Subchapter H, Division 4, Section 101.372. The TNRCC also adopted new 30 TAC 117.571. All of these provisions were also submitted to EPA on July 15, 2002, as part of rule project number 2001–063–101–AI.

- EPA fully approved the amendments to section 101.302 on September 6, 2006. See 71 FR 52698.

- EPA conditionally approved the amendments to section 101.372 on September 6, 2006. See 71 FR 52703. The conditional approval of the DERC Program was converted to a full approval on May 18, 2010. See 75 FR 27644.

- EPA has taken no action to date on new section 101.357. This section is severable from our analysis and action on the EBTA program because the MECT Program is a separate, stand-alone cap and trade program specific to the Houston-Galveston-Brazoria (HGB) ozone nonattainment area. This action remains open for review and action at a later date by EPA.

- EPA has taken no action to date on new section 117.571. This section is severable from our analysis and action on the EBTA program because section 117.571 establishes provisions to allow the substitution of emissions reductions achieved under the Texas Emission

Reduction Program (TERP) for NO<sub>x</sub> emission reductions required in the HGB and Dallas/Fort Worth ozone nonattainment areas. This section remains open for review and action at a later date by EPA.

#### October 24, 2006

- On October 4, 2006, the Texas Commission on Environmental Quality (TCEQ) adopted the repeal of 30 TAC Section 101.338 and new 30 TAC Sections 101.338 and 101.339. The Chairman of the TCEQ, Ms. Kathleen Hartnett White, submitted these provisions as a SIP revision in a letter dated October 24, 2006, for rule project number 2005–054–101–PR. In this SIP submittal cover letter, Chairman White requested that EPA take no federal action on 30 TAC Section 101.337 submitted on January 3, 2000; section 101.337 establishes requirements unique to the El Paso Region which will be state only requirements.

- On October 4, 2006, TCEQ also adopted revisions to the ERC program at 30 TAC Chapter 101, Sections 101.302, 101.305 and 101.306 to address the mandates of Texas Senate Bill 784 and the conditions of EPA's final conditional approval of the DERC Program, September 6, 2006. See 71 FR 52703. Also at this time, the TCEQ adopted revisions to the DERC Program at 30 TAC Chapter 101, Sections 101.372, 101.373, 101.375, 101.376, and 101.378 to address the mandates of Texas SB 784 and the conditions of EPA's final conditional approval of the DERC Program, September 6, 2006. All of these revisions were submitted to EPA on October 24, 2006, as part of rule project number 2005–054–101–PR.

- On April 30, 2010, EPA fully approved the amendments to the ERC and DERC Programs at 30 TAC Chapter 101, Sections 101.302, 101.305, 101.306, 101.372, 101.373, 101.375, 101.376, and 101.378. See 75 FR 27644 and 75 FR 27647, May 18, 2010.

### III. What is the Emissions Banking and Trading of Allowances Program?

#### Why did Texas develop the EBTA Program?

The TCEQ created the EBTA Program to implement the requirements of Texas SB 7, from the 76th Legislature, 1999, which deregulated the electric utility industry. Under 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<sub>x</sub> emissions and a 25 percent reduction in SO<sub>2</sub> emissions,

<sup>1</sup> A grandfathered facility is defined as a facility that is not a new facility, was constructed prior to August 30, 1971 (or no construction contract was executed on or before August 30, 1971 that specified a beginning construction date on or before February 29, 1972) and has not been modified since August 30, 1971. EPA SIP-approved this definition on April 14, 2010, see 75 FR 19468.

both based on 1997 heat input data, from participating sources. The permitting system required under SB 7 and established at 30 TAC Chapter 116, Subchapter I, is being evaluated in a separate rulemaking action (See 75 FR 64235, October 19, 2010 at docket EPA–R06–OAR–2005–TX–0031).

#### *How does the EBTA Program work?*

The EBTA Program is similar to the source specific emissions cap as described in EPA's Economic Incentive Program (EIP) Guidance, "Improving Air Quality with Economic Incentive Programs" (EPA–452/R–01–001, January 2001) (EIP Guidance). A source specific emissions cap (SSEC) allows a limited group of sources that are subject to a rate-based emission limit to meet that requirement by accepting a mass-based emission limit, or cap, rather than complying directly with a rate-based limit. Some attributes that characterize a successful SSEC include a well-defined group of sources, little potential for emissions to shift from included sources to excluded sources, and a relatively low level of uncertainty associated with the program. In the EBTA Program, the participating sources are limited to grandfathered and electing electric generating facilities (EGFs). An electing EGF is a facility permitted under 30 TAC Chapter 116, Subchapter B that elects to comply with the permitting program established in Texas SB 7 at 30 TAC Chapter 116, Subchapter I.

The EBTA divides Texas into three regions—East Texas, West Texas, and El Paso. The East Texas Region includes all counties traversed by or east of Interstate Highway 35 north of San Antonio or traversed by or east of Highway 37 south of San Antonio, also including Bexar, Bosque, Coryell, Hood, Parker, Somervell, and Wise Counties. The West Texas Region includes all counties not contained in the East Texas or El Paso Regions. The El Paso Region is defined at 30 TAC section 101.330(13) as all of El Paso County, Ciudad Juarez, Mexico, and Sunland Park, New Mexico. Note that on October 24, 2006, TCEQ requested no Federal action on the portions of the EBTA that pertain to the El Paso region.

To achieve the reductions of 50 percent NO<sub>x</sub> emissions and 25 percent SO<sub>2</sub> emissions, the TCEQ established emission caps for each region. The caps consist of allowances allocated by the TCEQ to each facility in the EBTA initially by January 1, 2000, for grandfathered EGFs and by January 1, 2001, for electing EGFs. Beginning in 2004, the TCEQ will allocate the allowances to all facilities in the EBTA

by May 1 of each year. The TCEQ will deposit the same amount of allowances into each grandfathered or electing EGF's compliance account at the beginning of each control period, with the exception that the allocation for electing EGFs may be adjusted to reflect new state or Federal requirements. An allowance is the authorization to emit one ton of NO<sub>x</sub> or SO<sub>2</sub> during a control period and does not constitute a security or property right. All allowances will be allocated, transferred, or used as whole allowances. The control period for the EBTA is the 12-month period beginning May 1 of each year and ending April 30 of the following year, with the initial control period beginning May 1, 2003.

A facility can choose to operate at, above, or below its allowance budget. A source operating below its allowance budget can bank or trade its allowances for use in subsequent control periods. A source operating above its allowance budget must purchase excess allowances from another source to demonstrate compliance with the cap. Beginning June 1, 2004, and no later than June 1 following the end of every control period, each facility must hold a quantity of allowances in its compliance account that is equal to or greater than the total emissions of air contaminant emitted during the control period just ending. If a facility's actual emissions of air contaminant during a control period exceed the amount of allowances held in the compliance account on June 1, allowances for the next control period will be reduced by an amount equal to the emissions exceeding the allowances in the compliance account. This deduction does not preclude any additional enforcement action by the TCEQ.

Facilities subject to the EBTA must submit a report to the TCEQ by June 30 of each year following the completed control period. This report must include the amount of emissions of each allocated air contaminant and a summary of all final trades for the preceding control period. Additionally, facilities subject to the EBTA will quantify and report emissions using the monitoring and reporting requirements of 30 TAC 116.914 (See 75 FR 64235, October 19, 2010 at docket EPA–R06–OAR–2005–TX–0031).

A grandfathered or electing EGF may use emission reductions achieved from Mexico in lieu of allowances for compliance with the EBTA. The emission reductions may be criteria pollutants or precursors of criteria pollutants, with the exception of lead emissions. The reductions may be used in lieu of the same pollutant

requirement (i.e., NO<sub>x</sub> reductions from Mexico are substituted for NO<sub>x</sub> requirements in Texas). Or, the reductions of criteria pollutants or their precursors may be substituted for emission reduction requirements for other criteria pollutants (i.e., reductions in CO emissions could be substituted for NO<sub>x</sub> or SO<sub>2</sub> emission requirements). In the event the Mexican reduction is being substituted for a criteria pollutant requirement (CO for NO<sub>x</sub> or SO<sub>2</sub>), the substitution must result in greater health benefits and must be of equal or greater benefit to the overall air quality of the area; or the substitution occurs between criteria pollutants for which the area has been designated nonattainment. Generally, the use of reductions from outside the United States must be approved by the TCEQ executive director and the EPA, and the user of the emission reduction must:

1. Demonstrate to the TCEQ executive director and to the EPA that the reduction is real, permanent, enforceable, quantifiable and surplus to any applicable Mexican, federal, state, or local law;

2. Demonstrate that the use of the reduction does not cause localized health impacts, as determined by the TCEQ executive director and EPA;

3. Submit all supporting information for calculations and modeling, and any additional information requested by the TCEQ executive director and EPA; and

4. Be located within 100 kilometers of the Texas-Mexico border.

Sources subject to the EBTA submit an annual compliance report to the TCEQ by June 30 of each year. This report details the amount of emissions of each allocated air contaminant and a summary of all final trades for the preceding control period. Through review of these reports, the TCEQ is able to determine which facilities are in compliance with the program.

The TCEQ executive director will also develop a report no later than September 30th following each control period that includes the number of allowances allocated to each compliance account; the total number of allowances allocated under the EBTA program; the number of actual NO<sub>x</sub> and SO<sub>2</sub> allowances subtracted from each compliance account based on the actual NO<sub>x</sub> and SO<sub>2</sub> emissions from the site; and a summary of all trades completed under the EBTA program.

Additionally, the TCEQ executive director will audit the program no later than three years after the effective date of the EBTA program, and every three years thereafter. The audit will evaluate the impact of the program on the state's ozone attainment demonstrations, the

availability and cost of allowances, compliance by the participants, and any other elements the executive director deems necessary. If any problems are identified, the executive director will recommend remedies, including the discontinuation of trading in whole or part. This audit will be submitted to the EPA and made available for public inspection within six months after the audit begins.

#### IV. What is EPA's evaluation of the Emissions Banking and Trading of Allowances 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 TSD for this rulemaking. Additionally, we reviewed the EBTA program with respect to EPA's 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 EGFs 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.

#### IV. Final Action

EPA is taking direct final action to approve portions of four revisions to the Texas SIP submitted on January 3, 2000; September 11, 2000; July 15, 2002; and October 24, 2006. Specifically, EPA is approving 30 TAC Chapter 101, Subchapter H, Division 2, Sections 101.330–101.336, submitted on January 3, 2000; the revisions to 30 TAC section 101.333 submitted on September 11, 2000; the adoption of new 30 TAC section 101.338 submitted on July 15, 2002; and the revisions to 30 TAC section 101.338 and the adoption of new 30 TAC section 101.339 submitted on October 24, 2006.

#### V. 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. 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 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 January 18, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 5, 2010.

**Lawrence E. Starfield,**

*Acting Regional Administrator, EPA 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
<b>Chapter 101—General Air Quality Rules</b>				
* * *	* * *	* * *	* * *	* * *
<b>Subchapter H—Emissions Banking and Trading</b>				
* * *	* * *	* * *	* * *	* * *
Section 101.311 .....	Program Audits and Reports .....	11/10/04	9/6/06, 71 FR 52698.	
<b>Division 2—Emissions Banking and Trading of Allowances</b>				
Section 101.330 .....	Definitions .....	12/16/1999	November 16, 2010 [Insert FR page number where document begins].	
Section 101.331 .....	Applicability .....	12/16/1999	November 16, 2010 [Insert FR page number where document begins].	
Section 101.332 .....	General Provisions .....	12/16/1999	November 16, 2010 [Insert FR page number where document begins].	
Section 101.333 .....	Allocation of Allowances .....	08/09/2000	November 16, 2010 [Insert FR page number where document begins].	
Section 101.334 .....	Allowance Deductions .....	12/16/1999	November 16, 2010 [Insert FR page number where document begins].	
Section 101.335 .....	Allowance Banking and Trading ..	12/16/1999	November 16, 2010 [Insert FR page number where document begins].	
Section 101.336 .....	Emission Monitoring, Compliance Demonstration, and Reporting.	12/16/1999	November 16, 2010 [Insert FR page number where document begins].	
Section 101.338 .....	Emission Reductions Achieved Outside the United States.	10/04/2006	November 16, 2010 [Insert FR page number where document begins].	
Section 101.339 .....	Program Audits and Reports .....	10/04/2006	November 16, 2010 [Insert FR page number where document begins].	
* * *	* * *	* * *	* * *	* * *

[FR Doc. 2010-28659 Filed 11-15-10; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-HQ-OAR-2010-0473; FRL-9227-6]

**Extension of Deadline for Action on the Second Section 126 Petition From New Jersey**

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

**ACTION:** Final rule.

**SUMMARY:** In this action, EPA is determining that 60 days is insufficient time to complete the technical and other analyses and the public notice and comment process required for our review of a petition submitted by the State of New Jersey Department of Environmental Protection (New Jersey) pursuant to section 126 of the Clean Air Act (CAA). The petition requests that EPA make a finding that the coal-fired Portland Generating Station in Upper Mount Bethel Township, Northampton County, Pennsylvania, is emitting air pollutants that significantly contribute to nonattainment or interfere with maintenance of the 1-hour sulfur

dioxide (SO<sub>2</sub>) national ambient air quality standards (NAAQS). Under the CAA, EPA is authorized to grant a time extension for responding to the petition if EPA determines that the extension is necessary, among other things, to meet the purposes of the CAA's rulemaking requirements. By this action, EPA is making that determination. EPA is therefore extending the deadline for acting on the petition to no later than May 16, 2011.

**DATES:** The effective date of this action is November 16, 2010.

**ADDRESSES:** EPA has established a docket for this rulemaking under Docket ID number EPA-HQ-OAR-2010-0473.