

net worth of a claimant payments received under the Medicare transitional assistance program and any savings associated with the Medicare prescription drug discount card.

(Authority: 42 U.S.C. 1395w-141(g)(6))

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[TX-107-1-7496; FRL-7890-1]

#### Approval and Promulgation of Implementation Plans; Texas; Post 1996 Rate-of-Progress Plan, Adjustments to the 1990 Base Year Emissions Inventory, and Motor Vehicle Emissions Budgets for the Dallas/Fort Worth Ozone Nonattainment Area

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision for the State of Texas. This revision includes the Post 1996 Rate-of-Progress (ROP) plan, adjustments to the 1990 base year emissions inventory, and ROP Motor Vehicle Emissions Budgets for the Dallas/Fort Worth (DFW) ozone nonattainment area. This plan shows planned emission reductions required by the Clean Air Act (Act) from 1996 to 1999 to improve air quality in the Dallas/Fort Worth Area. The reductions are from the 1990 base year emissions inventory. The adjustments to the 1990 base year emissions inventory improve that inventory. The Motor Vehicle Emissions Budgets are used for determining conformity of transportation projects to the SIP. This action satisfies the Act's requirements for a serious ozone nonattainment area's Post 1996 Rate-of-Progress requirements and approves the Motor Vehicle Emissions Budgets under the Rate-of-Progress Plan.

**DATES:** This rule is effective on April 27, 2005.

**ADDRESSES:** Copies of the documents relevant to this action are in the official file which is available 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 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.

Copies of any State submittals and EPA's technical support document are 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:** Herbert R. Sherrow, Jr., Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7237; fax number 214-665-7263; e-mail address [sherrow.herb@epa.gov](mailto:sherrow.herb@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

#### Outline

- I. What Action Is EPA Taking?
- II. What Is the Background for This Action?
- III. What Comments Were Received During the Public Comment Period, January 18, 2001, to March 19, 2001?
- IV. Final Action
- V. Statutory and Executive Order Reviews

#### I. What Action Is EPA Taking?

EPA is approving the Post 1996 Rate of Progress (ROP) plan, the adjustments to the 1990 base year emissions inventory, and the Motor Vehicle Emissions Budgets (MVEB) for the DFW ozone nonattainment area, submitted by Texas on October 25, 1999 and found complete on January 6, 2000.

#### II. What Is the Background for This Action?

We proposed approval of these SIP elements on January 28, 2001. We waited to take final action until the issue on the appropriate use of the MOBILE5 on-road mobile emission model was determined in *Sierra Club v. EPA*, 356 F.3d 296 (DC Cir. 2004). The Court found that the use of MOBILE5 was acceptable even if a more recent version was available because MOBILE5 was the best available version at the time the plan was prepared.

The Post 1996 ROP plan (9% plan) was designed to reduce ozone forming emissions from the baseline emissions

by 9% in the DFW nonattainment area for the years 1997-1999. We received no new information that would change the approvability of the ROP target calculations and none of the credits relied upon for meeting the ROP targets have changed since our proposal date. Therefore, this plan meets the Reasonable Further Progress requirements of the Act (section 182(c)(2)). The MVEBs associated with the 9% plan have been found to meet the adequacy criteria, effective January 27, 2000, and are consistent with the ROP plan. Therefore, they too are approvable. The adjustments to the 1990 base year emissions inventory improved the inventory through improvements in methodology implemented subsequent to the submission of the original inventory.

Please refer to 66 FR 4764, January 18, 2001, and its technical support document for details on the 9% Plan, the adjusted 1990 emissions inventory, and the MVEBs.

#### III. What Comments Were Received During the Public Comment Period, January 18, 2001, to March 19, 2001?

We did not receive any comments on the 9% Plan, the MVEBs, or the adjustments to the 1990 base year emissions inventory.

#### IV. Final Action

EPA is approving the Post 1996 Rate of Progress plan, the adjustments to the 1990 base year emissions inventory, and the Motor Vehicle Emissions Budgets submitted by Texas on October 25, 1999, for the DFW ozone nonattainment area. The VOC MVEB for the ROP plan is 147.22 tons per day and the NO<sub>x</sub> MVEB is 284.14 tons per day.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements

under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the

absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 May 27, 2005.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 8, 2005.

**Richard E. Greene,**  
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. In § 52.2270, the table in paragraph (e) entitled "EPA approved nonregulatory provisions and quasi-regulatory measures" is amended by adding two new entries to the end of the table to read as follows:

**§ 52.2270 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

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

Name of SIP provision	Applicable geographic or nonattainment area	State approval/submittal date	EPA approval date	Comments
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Approval of the Post-1996 Rate-of-Progress Plan and Motor Vehicle Emission Budgets.	Dallas-Fort Worth .....	10/25/1999	3/28/05, [Insert FR page number where document begins]	
Adjustments to the 1990 base year emissions inventory.	Dallas-Fort Worth .....	10/25/1999	3/28/05, [Insert FR page number where document begins]	

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-7889-8]

#### South Carolina: Final Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Immediate final rule.

**SUMMARY:** South Carolina has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize South Carolina's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

**DATES:** This Final authorization will become effective on May 27, 2005, unless EPA receives adverse written comment by April 27, 2005. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

**ADDRESSES:** Send written comments to Thornell Cheeks, South Carolina Authorizations Coordinator, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303-3104; (404) 562-8479. The application can be viewed electronically at <http://www.regulation.gov>. Electronic comments on the application can be made from this site. You may also e-mail your comments to [Cheeks.Thornell@epa.gov](mailto:Cheeks.Thornell@epa.gov). You can view and copy South Carolina's applications from 9 a.m. to 4 p.m. at the following

addresses: South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, (803) 896-4174; and EPA Region 4, Atlanta Federal Center, Library, 61 Forsyth Street, SW., Atlanta, Georgia 30303; (404) 562-8190, John Wright, Librarian.

#### FOR FURTHER INFORMATION CONTACT:

Thornell Cheeks, South Carolina Authorizations Coordinator, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303-3104; (404) 562-8479.

#### SUPPLEMENTARY INFORMATION:

##### A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

##### B. What Decisions Have We Made in This Rule?

We conclude that South Carolina's applications to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant South Carolina Final authorization to operate its hazardous waste program with the changes described in the authorization applications. South Carolina has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in South Carolina,

including issuing permits, until the State is granted authorization to do so.

##### C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in South Carolina subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. South Carolina has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits;
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which South Carolina is being authorized by today's action are already effective, and are not changed by today's action.

##### D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

##### E. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do