

[FR Doc. 05-16489 Filed 8-18-05; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R06-OAR-2005-OK-0002; FRL-7956-2]

#### Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Attainment Demonstration for the Tulsa Early Action Compact Area

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving a revision to the Oklahoma State Implementation Plan (SIP) submitted by the Secretary of the Environment on December 22, 2004. The revision will incorporate a Memorandum of Agreement (MOA) between the Oklahoma Department of Environmental Quality (ODEQ) and the Indian Nation Council of Governments (INCOG) into the Oklahoma SIP and includes a demonstration of attainment and maintenance for the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. The MOA outlines duties and responsibilities of each party for implementation of pollution control measures for the Tulsa Metropolitan Area Early Action Compact (EAC) area. EPA is approving the photochemical modeling in support of the attainment demonstration for the 8-hour ozone standard within the Tulsa EAC area and is approving the associated control measures. These actions strengthen the SIP in accordance with the requirements of sections 110 and 116 of the Federal Clean Air Act (the Act) and will result in emission reductions needed to help ensure attainment and maintenance of the 8-hour NAAQS for ozone.

**DATES:** This final rule is effective on September 19, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Materials in EDocket (RME) ID No. R06-OAR-2005-OK-0002. All documents in the docket are listed in the RME index at <http://docket.epa.gov/rmepub/>; once in the system, select "quick search," then type in the appropriate RME docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information the disclosure of which 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 either electronically in RME 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 cents 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 is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Oklahoma Department of Environmental Quality, Air Quality Division, 707 North Robinson, Oklahoma City, OK 73101-1677.

**FOR FURTHER INFORMATION CONTACT:** Carrie Paige, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-6521, [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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

#### **Outline**

- I. Background
- II. What Action Is EPA Taking?
- III. What Comments Did EPA Receive on the May 12, 2005 Proposed Rulemaking for the Tulsa EAC Area?
- IV. Final Action
- V. Statutory and Executive Order Reviews

#### **I. Background**

On May 12, 2005, EPA proposed approval of the Tulsa EAC area's clean air action plan (Plan), the photochemical modeling in support of the attainment demonstration and related control measures as revisions to the SIP submitted to EPA by the State of Oklahoma. The proposal provides a detailed description of these revisions and the rationale for EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period for these actions closed on June 13, 2005. See the Technical Support Documents or our proposed

rulemaking at 70 FR 25004 for more information. One adverse comment was received on EPA's proposed approval of the Tulsa EAC Plan and 8-hour ozone attainment demonstration for the EAC area.

#### **II. What Action Is EPA Taking?**

Today we are approving revisions to the Oklahoma SIP under sections 110 and 116 of the Act. The revisions demonstrate continued attainment and maintenance of the 8-hour ozone standard within the Tulsa EAC area. The revisions include the Tulsa EAC Plan, photochemical modeling and related control measures. The intent of the SIP revisions is to reduce ozone pollution and thereby maintain the 8-hour ozone standard.

#### **III. What Comments Did EPA Receive on the May 12, 2005 Proposed Rulemaking for Tulsa?**

We received one comment letter on the May 12, 2005 proposed rulemaking. The letter provided both supportive and adverse discourse, commending the State of Oklahoma for steps it has taken to improve air quality. The commenter opposes approval of the SIP revision because, should the area experience a violation of the 8-hour ozone standard, the SIP revision (1) provides for the deferment of the area's nonattainment designation to as late as December 31, 2007, and (2) relieves the area of its obligations under Title I, Subpart D of the Act. The commenter contends that EPA does not have the legal authority to defer the effective date of an area's nonattainment designation nor to relieve areas of the obligations of Part D of Title I of the Act when areas are violating the standard and designated nonattainment.

*Response:* We appreciate the support expressed towards the State of Oklahoma and towards the efforts made to ensure that the citizens in the Tulsa EAC area continue to breathe clean air. We continue to believe that the EAC program, as designed, gives Tulsa the flexibility to develop their own approach to maintaining the 8-hour ozone standard and believe Tulsa is serious in their commitment to control emissions from local sources. By involving diverse stakeholders, including representatives from industry, local and State governments, and local environmental and citizen groups, Tulsa is implementing regional cooperation in solving air quality problems that affect the health and welfare of its citizens. People living in the Tulsa EAC area will realize reductions in pollution levels and enjoy the health benefits of cleaner air sooner than might otherwise occur.

In the April 2004 designation rule (69 FR 23858), the Tulsa EAC area was designated as attainment for the 8-hour ozone NAAQS. The commenter incorrectly asserts that this SIP revision provides for deferment of the designation of the area as nonattainment should the area experience a violation of the 8-hour ozone standard. Nor does EPA's approval of this SIP alter the applicability of the redesignation provision of the Act should the Tulsa EAC area experience a violation of the 8-hour ozone NAAQS in the future. Section 107(d)(3)(A) provides that EPA may redesignate an area "on the basis of air quality data, planning and control considerations, or any other air quality-related considerations." Should the Tulsa EAC area experience a violation of the 8-hour ozone NAAQS in the future, EPA would consider these statutory factors in determining whether to redesignate the area to nonattainment for the 8-hour ozone NAAQS. The commenter is also incorrect that this SIP approval relieves the Tulsa EAC area of the requirements of Part D of Title I of the Act. These provisions apply to areas designated nonattainment. Because the Tulsa EAC area is designated attainment for the 8-hour ozone NAAQS, these provisions do not apply in the Tulsa EAC area.

#### IV. Final Action

EPA is approving the attainment demonstration, the Tulsa EAC Plan, and the related control measures, and we are incorporating these revisions, as well as the MOA, into the Oklahoma SIP. We have determined that the control measures included in the attainment demonstration are quantified, surplus, permanent, and are Federally enforceable once approved into the SIP. The modeling of ozone and ozone precursor emissions from sources in the Tulsa EAC area demonstrate that the specified control strategies will provide for continued attainment of the 8-hour ozone NAAQS through December 31, 2007 and maintenance of that standard through 2012. We have reviewed the Plan and the attainment and maintenance demonstration and determined that they are consistent with the requirements of the Act, EPA's policy, and the EAC protocol.

#### 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 and because this action will not have a significant, adverse effect on

the supply, distribution, or use of energy, 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).

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This rule may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. This rule incorporates an MOA between the ODEQ and INCOG into the Oklahoma SIP. The MOA was the result of numerous discussions between local communities and State air quality officials. Tribal officials were invited to participate in the process of developing the Early Action Compact, but chose not to send a representative to any of the meetings. Local communities and State air quality officials voluntarily agreed to implement this rule revision so that the Tulsa EAC area could continue to attain and maintain the 8-hour ozone standard.

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 under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), 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 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. 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 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. section 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 October 18, 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, Intergovernmental relations, Nitrogen dioxides, Ozone,

Reporting and recordkeeping requirements, Volatile Organic Compounds.

Dated: August 12, 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 LL—Oklahoma**

■ 2. The first table in § 52.1920(e) entitled “EPA approved nonregulatory

provisions and quasi-regulatory measures” is amended under Chapter 4, immediately following the last entry under Chapter 4, to read as follows:

**§ 52.1920 Identification of plan.**

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(e) \* \* \*

**EPA APPROVED OKLAHOMA NONREGULATORY PROVISIONS**

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
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K. Tulsa EAC Area 8-hour ozone standard attainment demonstration, Clean Air Plan, Transportation Emission Reduction Strategies, and Memorandum of Agreement between the ODEQ and INCOG defining duties and responsibilities of each party for implementation of the Tulsa Area Transportation Emission Reduction Strategies.	Tulsa County and portions of Creek, Osage, Rogers and Wagoner Counties.	12/22/2004	8/19/05 [Insert FR page number where document begins].	
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[FR Doc. 05–16488 Filed 8–18–05; 8:45 am]  
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R06–OAR–2005–TX–0021; FRL–7956–3]

**Approval and Promulgation of Implementation Plans; State of Texas; Control of Air Pollution From Motor Vehicles, Mobile Source Incentive Programs**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** The EPA is approving a revision to the Texas State Implementation Plan (SIP) to incorporate the Texas Emission Reduction Plan (TERP) into the Texas SIP. The TERP is utilized in each of the nonattainment areas and near nonattainment areas in the State to achieve reductions in the emissions of oxides of nitrogen from on-road and non-road mobile sources. This action will allow the State to capture credit from those reductions and use them in attainment demonstrations for these areas.

**DATES:** This rule is effective on September 19, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Materials in EDocket (RME) Docket ID

No. R06–OAR–2005–TX–0021. All documents in the docket are listed in the RME index at <http://docket.epa.gov/rmepub/>, once in the system, select “quick search,” then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information, the disclosure of which 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 either electronically in RME 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 cents 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 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:** Ms. Sandra Rennie, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7367; fax (214) 665–7263; e-mail address [rennie.sandra@epa.gov](mailto:rennie.sandra@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

**Outline**

- What Action Are We Taking?
- What Is the Background for This Action?
- What Do These Rules Require?
- What Are Oxides of Nitrogen?
- What Areas in Texas Will This Action Affect?
- Why Are We Approving This Submittal?
- What Comments Did We Receive?
- Final Rule
- Statutory and Executive Order Reviews

**What Action Are We Taking?**

We are approving this revision to the SIP as meeting the requirements of the economic incentive program guidance. For a more complete description of our review, please see the technical support document for this action and our **Federal Register** notice of proposed approval dated May 12, 2005 (70 FR 25008).

We are approving rules that implement the TERP legislation. On March 9, 2005, the Texas Commission on Environmental Quality submitted to