

Upper Savannah Early Action Compact Areas."

§ 52.2120 Identification of plan.

(c) * * *

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	Federal Register Notice
* * * Regulation 62.2	Prohibition of Open Burning	06/25/04	08/26/05	[Insert first page number of publication].
Regulation No. 62.5 Air Pollution Control Standards				
* * * Standard No. 5.2	Control of Oxides of Nitrogen (NO _x)	06/25/04	08/26/05	[Insert first page number of publication].
* * * * *				

(e) * * *

EPA-APPROVED SOUTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Explanation
* * * Attainment Demonstration for the Appalachian, Catawba, Pee Dee, Waccamaw, Santee Lynches, Berkeley-Charleston-Dorchester, Low Country, Lower Savannah, Central Midlands, and Upper Savannah Early Action Compact Areas.	12/29/04	08/26/05	[Insert first page number of publication].

[FR Doc. 05-16598 Filed 8-25-05; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04-OAR-2005-TN-0001, R04-OAR-2004-GA-0004-200522; FRL-7956-9]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee and Georgia; Attainment Demonstrations for the Chattanooga, Nashville, and Tri-Cities Early Action Compact Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the Tennessee and Georgia State Implementation Plans (SIPs) submitted by the State of Tennessee, through the Department of Environment and Conservation (TDEC) on December 29, 2004, and by the State of Georgia, through the Environmental Protection Division (GAEPD) on December 31,

2004, for the three Early Action Compact (EAC) areas in Tennessee and Georgia: the Chattanooga, Nashville, and Tri-Cities Areas (the Tennessee and Georgia EAC Areas). The Chattanooga EAC Area is the only one of the three with counties in both Tennessee and Georgia; the other two EAC Areas are located entirely within the State of Tennessee. The SIP revisions meet the requirements for the Tennessee and Georgia EAC Areas to attain and maintain the 8-hour ozone national ambient air quality standard (8-hour ozone standard) as described in the EAC Protocol and related regulations. EPA is also now approving the photochemical modeling used by Tennessee and Georgia to support the attainment and maintenance demonstrations of the 8-hour ozone standard in the Tennessee and Georgia EAC Areas.

In this action, EPA is not finalizing its proposed rulemaking to defer the effective date of the nonattainment designations for EAC areas. In a separate action, published on June 8, 2005, EPA proposed to defer the effective date of the nonattainment deferred designation for EAC areas until December 31, 2006 (69 FR 23858). EPA final action on the

deferral is expected to be published before September 30, 2005.

DATES: This rule will be effective September 26, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) ID No. R04-OAR-2005-TN-0001 and R04-OAR-2004-GA-0004. The EAC Protocol can be found in RME ID No. R04-OAR-2005-TN-0001. The Protocol can also be found at <http://www.epa.gov/air/eac/>. 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., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Regulatory Development Section,

Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anne Marie Hoffman, or Scott Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number for Mr. Martin is (404) 562–9036, and the telephone number for Ms. Hoffman is (404) 562–9074. Mr. Martin can also be reached via electronic mail at martin.scott@epa.gov. Ms. Hoffman can also be reached via electronic mail at hoffman.annemarie@epa.gov.

SUPPLEMENTARY INFORMATION:

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- I. Background
- II. Today's Action
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- IV. Final Action
- V. Statutory and Executive Order Reviews

I. Background

On May 26, 2005, EPA proposed approval of SIP revisions for the Tennessee and Georgia EAC Areas demonstrating attainment and maintenance of the 8-hour ozone standard, 0.08 parts per million (ppm), in these areas by December 31, 2007.¹ Additional information regarding the SIP revisions being approved today is available in the proposed rule (70 FR 30389, May 26, 2005) and the Docket for this action. The submitted revisions are consistent with the requirements established in the EAC Protocol and related regulations. For further information on the designation process and the Tennessee and Georgia EAC designations, see 69 FR 23856, April 30, 2004.² EPA received one public comment during the thirty day comment period for the SIP revisions being approved today. This comment is

¹ The 8-hour ozone standard was promulgated on July 18, 1997 (62 FR 38856).

² As discussed in the April 30, 2004, designations and the May 26, 2005, proposal for the Tennessee and Georgia SIP revisions, the Tennessee and Georgia EAC Areas include counties designated as unclassifiable/attainment and nonattainment deferred. The specific measures included in the SIP revisions may be different depending on the specific county's designation.

discussed below, in Part III., "Response to Comments."

In addition, today's action corrects an inadvertent error in the May 26, 2005, proposal to approve the Tennessee and Georgia EAC SIP revisions. In the proposal document, EPA indicated in Table 5 (see 70 FR 30389, 30388) that two local measures were not modeled for the Chattanooga EAC Area. In fact, the two measures were modeled and included as part of the attainment demonstration, and the measures should not appear in Table 5. See Section II., "Today's Action" for more details regarding this inadvertent error.

Summary of EAC Process

An EAC is an agreement between a state, local governments, and EPA to implement measures not necessarily required by the Clean Air Act (CAA) in order to achieve cleaner air as soon as possible.³ Communities close to or exceeding the 8-hour ozone standard, which have elected to enter into an EAC, have started reducing air pollution at least two years sooner than required by the CAA. In many cases, these reductions will be achieved by local air pollution control measures not otherwise mandated under the CAA. In accordance with the EAC Protocol, Tennessee submitted EACs for the Chattanooga area, Nashville area, and Tri-Cities area, on December 30, 2002. The State of Georgia submitted materials supporting the Chattanooga EAC on December 24, 2002. The compacts were signed by State air quality officials, representatives of local communities, and the Regional Administrator of EPA Region 4. The EAC program was designed for areas that approached or monitored violations of the 8-hour ozone standard, but that were in attainment for the 1-hour ozone national ambient air quality standard (1-hour ozone standard). The 1-hour ozone standard will be revoked for counties in the EAC areas one year after the effective dates of the counties' respective 8-hour ozone designations. See 40 CFR 50.9(b) for additional information on the 1-hour ozone revocation.

As part of the EAC process, EPA deferred the effective date of the nonattainment designations for EAC areas that were violating the 8-hour ozone standard, but continue to meet the milestones described in the EAC Protocol. Details of this deferral were published in the **Federal Register** on

³ Further information about the EAC program is available in the EAC Protocol and prior **Federal Register** notices available at <http://www.epa.gov/air/eac/>.

April 30, 2004 (69 FR 23858). On June 8, 2005, EPA proposed to extend the deferred effective date of the nonattainment designations through December 31, 2006 (70 FR 33409), for the EAC areas that have met their obligations. A subsequent EPA action will continue the deferral until December 31, 2007, when attainment evaluations will begin. Pursuant to the EAC Protocol, the designation process is scheduled to be completed by April 15, 2008. To date, the Tennessee and Georgia EAC Areas have met all the EAC milestones. In April, 2008, it is anticipated that EAC areas with air quality monitoring data showing attainment for the years 2005–2007, that have also met all the compact milestones, will be designated attainment for the 8-hour ozone standard. EPA believes that early planning and implementation of control measures that improve air quality will likely accelerate protection of public health. The EAC program allows participating state and local entities to make decisions that will accelerate meeting the new 8-hour ozone standard using a mix of local, state, and federal measures. All of the measures being adopted today as part of the SIP revisions will be mandatory and federally enforceable.

Brief Summary of Control Measures and Modeling

The details of the SIP revisions being approved today are available for review under RME ID No. R04-OAR-2005-TN-0001 and R04-OAR-2004-GA-0004. In addition, the measures discussed in this paragraph are applied differently to different areas depending on the specific area's designation (*i.e.*, unclassifiable/attainment or nonattainment deferred). Generally, however, the SIP revisions include emissions inventory, modeling, control strategies, and maintenance for growth elements as required by the EAC Protocol. With regard to control measures, the Tennessee and Georgia SIP revisions include Federal, State, and local control measures. The federal control measures include, among others, Tier 2 vehicle standards and low sulfur fuel. The State of Tennessee control measures include, among others, expansion of the Motor Vehicle Inspection and Maintenance (I/M) program, expansion of the Stage I Vapor Recovery program, and a Motor Vehicle Tampering provision. The State of Georgia submittal included two control measures that will be implemented in the Chattanooga EAC Area: an open burning ban during the ozone season and Stage I Vapor Recovery. These

statewide measures were enacted through state legislation, but implementation will occur at a local level, through both county and state involvement in implementation and enforcement. The local control measures in both states include, among others, open burning bans and transportation emissions control measures. All of these measures, including the local measures, will be enforceable once they are incorporated into the SIP.

In addition to control measures, the Tennessee and Georgia SIP revisions also include maintenance for growth plans that meet and exceed the requirements of the EAC Protocol for such plans. The EAC Protocol requires that maintenance of the 8-hour ozone standard be demonstrated through 2012. In the SIP revisions being approved today, the States of Tennessee and Georgia modeled maintenance of the 8-hour ozone standard through at least 2012, and until 2017, in some Tennessee EAC Areas.

Both Tennessee and Georgia used a process known as photochemical modeling to evaluate attainment and maintenance of the 8-hour ozone standard. Photochemical modeling performed by Tennessee used the above described control measures, and others, to model attainment and maintenance of the 8-hour ozone standard through 2017, passing the attainment test for 2007, 2012, and 2017. Georgia's SIP revisions model attainment and maintenance through 2012, passing the attainment test for 2007, and 2012. The use of photochemical modeling is consistent with the EAC Protocol and the EPA Draft modeling guidance that was provided to EAC areas.⁴ The Chattanooga EAC is a multi-state EAC Area, including counties in Tennessee and Georgia; therefore, an attainment demonstration was developed for the Chattanooga EAC Area by the State of Georgia. According to Georgia's modeling for the Chattanooga EAC Area, maintenance of the 8-hour ozone standard is demonstrated through 2012. For further information on the photochemical modeling performed by Tennessee, please see RME ID No. R04-OAR-2005-TN-0001. For further information on photochemical modeling performed by Georgia, please see RME ID No. R04-OAR-2004-GA-0004.

II. Today's Action

Today we are taking final action to approve revisions to the Tennessee and Georgia SIPs under sections 110 and 116

of the Act, 42 U.S.C. 7410 and 7416. The SIP revisions are consistent with the EAC Protocol and related regulations. Pursuant to the EAC Protocol, the SIP revisions demonstrate attainment of the 8-hour ozone standard within the Tennessee and Georgia EAC Areas by 2007, maintenance for five or more years beyond 2007, and incorporate the control measures developed by these EAC Areas into the Tennessee and Georgia SIPs.

Additionally, today we are correcting inadvertent errors in Table 5 of the proposed rule published on May 26, 2005 (70 FR 30382). The specific corrections apply to Section VII.— “What Measures are Included in this EAC SIP Submittal.” Table 5—“Additional EAC Local Reductions Not Modeled,” on page 30387 of the proposal, shows that neither the seasonal open burning ban, nor the Spare the Air Program, was modeled for the Chattanooga EAC Area. These two local control measures were modeled and included in the Chattanooga EAC Area attainment demonstration. Therefore, these measures should not be included in Table 5.

III. Response to Comments

EPA Region 4 received one comment in response to the May 26, 2005, proposal to approve the Tennessee and Georgia SIP revisions. The commenter commended Tennessee and Georgia for taking steps to improve air quality, but noted opposition to today's action for two reasons. First, the SIP revisions provide for the deferment of a nonattainment designation until a future date potentially as late as December 31, 2007; second, the revisions relieve the areas of obligations under Title I, Subpart D of the CAA. These two issues are directly related to the proposed deferral of the nonattainment designation for the Tennessee and Georgia EAC Areas, published on June 8, 2005, (70 FR 33409), and not to today's approval of the SIP revisions. In addition, the same issues were raised by this commenter in response to EPA's June 8, 2005, deferral proposal. Because the comment relates to deferral issues, it will be responded to by EPA in our subsequent rulemaking addressing the deferred effective date for nonattainment designations for EAC areas. When published, this final deferral rule will be available on the EAC Web site <http://www.epa.gov/air/eac/>. Notably, contrary to the comment, today's action neither provides for deferral of the nonattainment designation nor relieves an area from obligations under Title I, Subpart D of the CAA.

IV. Final Action

Today EPA is approving revisions to the Tennessee SIP, submitted on December 29, 2004, and the Georgia SIP, submitted December 31, 2004. These revisions demonstrate attainment of the 8-hour ozone standard within the Tennessee and Georgia EAC Areas by 2007, maintenance of the standard for five or more years beyond 2007, and incorporate the control measures developed by the EAC Areas into the Tennessee and Georgia SIPs.

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

⁴This guidance can be found at <http://www.epa.gov/ttn/naaqs/ozone/eac/index.htm#Guidance>.

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 October 25, 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 CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 15, 2005.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

- 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 L—Georgia

- 2. Section 52.570 is amended by:

■ a. In paragraph (c) by revising the entries for: “391–3–1–02(2)(pp) Bulk Gasoline Plants”; “391–3–1–02(2)(rr) Gasoline Dispensing Facility—Stage I”, “391–3–1–02(2)(ss) Gasoline Transport Vehicles and Vapor Collection Systems” and “391–3–1–02(5) Open Burning”.

■ b. In paragraph (e) by adding a new entry 22. at the end of the table to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–02(2)(pp)	Bulk Gasoline Plants	1/08/2005	8/26/2005	[Insert first page number of publication].
391–3–1–02(2)(rr)	Gasoline Dispensing Facility—Stage I.	1/08/2005	8/26/2005	[Insert first page number of publication].
391–3–1–02(2)(ss)	Gasoline Transport Vehicles and Vapor Collection Systems.	1/08/2005	8/26/2005	[Insert first page number of publication].
391–3–1–02(5)	Open Burning	1/08/2005	8/26/2005	[Insert first page number of publication].

(e) * * *

EPA APPROVED GEORGIA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval date
*	*	*	*
22. Attainment Demonstration for the Chattanooga Early Action Area.	Walker and Catoosa Counties	December 31, 2004	August 26, 2005. [Insert first page number of publication]

Subpart RR—Tennessee

- 3. Section 52.2220 is amended by:
- a. In paragraph (c) under “Table-1 EPA Approved Tennessee Regulations” by revising entries for “1200–3–18–22,” “1200–3–18–24,” “1200–3–29–02,” “1200–3–29–03,” “1200–3–29–04,” “1200–3–29–05,” “1200–3–29–06,” “1200–3–29–07,” “1200–3–29–08,” “1200–3–29–09,” and “1200–3–29–10.”
- b. In paragraph (c) under “Table-1 EPA Approved Tennessee Regulations”

by adding in numerical order a new entry for “1200–3–29–12.”

- c. In paragraph (c) under “Table-1 EPA Approved Tennessee Regulations” by adding in numerical order a new chapter heading No. “1200–3–36 Motor Vehicle Tampering” and entries for “1200–3–26–01.”, “1200–3–26–02.”, “1200–3–26–03.” “1200–3–26–04” and “1200–3–26–05.”
- d. In paragraph (c) under “Table 4 EPA Approved Chattanooga Regulations” by revising the entries for

“Section 4–41 Rule 6 Prohibition of Open Burning” and “Section 41 Rule 25.10 Gasoline dispensing facilities—stage 1 vapor recovery,” and

- e. In paragraph (e) by adding a new entry at the end of the table to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 1.—EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 1200–3–18 Volatile Organic Compounds				
Section 1200–3–18–22	Bulk Gasoline Plants	12/29/2004	8/26/2005	[Insert first page number of publication].
Chapter 1200–3–29 Light-Duty Motor Vehicle Inspection and Maintenance				
*	*	*	*	*
Section 1200–3–29.02	Definitions	12/29/2004	8/26/2005	[Insert first page number of publication].
Section 1200–3–29.03	Motor Vehicle Inspection Requirements.	12/29/2004	8/26/2005	[Insert first page number of publication].
Section 1200–3–29–04	Exemption From Motor Vehicle Inspection Requirements.	12/29/2004	8/26/2005	[Insert first page number of publication].
Section 1200–3–29–05	Motor Vehicle Emission Performance Test Criteria.	12/29/2004	8/26/2005	[Insert first page number of publication].
Section 1200–3–29–06	Motor Vehicle Anti-Tampering Test Criteria.	12/29/2004	8/26/2005	[Insert first page number of publication].
Section 1200–3–29–07	Motor Vehicle Emissions Performance Test Methods.	12/29/2004	8/26/2005	[Insert first page number of publication].
Section 1200–3–29–08	Motor Vehicle Anti-Tampering Test Methods.	12/29/2004	8/26/2005	[Insert first page number of publication].
Section 1200–3–29–09	Motor Vehicle Inspection Program ..	12/29/2004	8/26/2005	[Insert first page number of publication].

TABLE 1.—EPA APPROVED TENNESSEE REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 1200-3-29-.10	Motor Vehicle Inspection Fee	12/29/2004	8/26/2005	[Insert first page number of publication].
Section 1200-3-29-.12	Area of Applicability	12/29/2004	8/26/2005	[Insert first page number of publication].
*	*	*	*	*
Chapter 1200-3-36 Motor Vehicle Tampering				
1200-03-36-01	Purpose	12/29/2004	8/26/2005	[Insert first page number of publication].
1200-03-36-02	Definitions	12/29/2004	8/26/2005	[Insert first page number of publication].
1200-03-36-03	Motor Vehicle Tampering Prohibited	12/29/2004	8/26/2005	[Insert first page number of publication].
1200-03-36-04	Recordkeeping Requirements	12/29/2004	8/26/2005	[Insert first page number of publication].
1200-03-36-05	Exemptions	12/29/2004	8/26/2005	[Insert first page number of publication].

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TABLE 4.—EPA APPROVED CHATTANOOGA REGULATIONS

State citation	Title/subject	Adoption date	EPA approval date	Explanation
Section 4-41, Rule 6	Prohibition of Open Burning	12/08/04	8/26/05	[Insert first page number of publication].
*	*	*	*	*
Section 4-41, Rule 25	General Provisions and Applicability for Volatile Organic Compounds	12/08/04	8/26/05	[Insert first page number of publication].
*	*	*	*	*

* * * * *

(e) * * *

EPA APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
*	*	*	*	*
Attainment Demonstrations for Early Action Compact Areas.	Chattanooga, Nashville, and Tri-Cities Early Action Compact Areas	December 31, 2004	August 26, 2005	[Insert first page number of publication].

[FR Doc. 05-16594 Filed 8-25-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06-OAR-2005-TX-0022; FRL-7959-5]

Limited Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown and Malfunction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes limited approval of revisions to the Texas State Implementation Plan (SIP) concerning excess emissions which we proposed, through the parallel processing mechanism, on May 9, 2005.

Specifically, we are finalizing limited approval of revisions to 30 TAC Chapter 101, General Air Quality Rules concerning excess emissions during startup, shutdown, and malfunction (SSM) activities. The action will have the effect of extending the expiration date of certain provisions from June 30, 2005 to no later than June 30, 2006.

Texas has made this change to allow for additional time before these provisions expire from the SIP to submit a revised excess emissions rule for our approval into the SIP.

DATES: This rule is effective on September 26, 2005.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar of the Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733 at (214) 665-6691, shar.alan@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background Information

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3. Who submitted comments to us?
4. What is our response to the submitted written comments?
5. What areas in Texas will these rule revisions affect?

II. Final Action

III. Statutory and Executive Order Reviews

In this document "we," "us," and "our" refer to EPA.

I. Background Information

1. What Actions Are We Taking in This Document?

On May 9, 2005 (70 FR 24348) we proposed limited approval of revisions to the Texas SIP pertaining to excess emissions during SSM activities. See 30 TAC, General Air Quality Rule 101, subchapter F, sections 101.221, 101.222, and 101.223. The currently approved Texas SIP provides that these three provisions of the State rules, that address excess emissions resulting from SSM related activities, will expire by their own terms on June 30, 2005. In granting a limited approval of those provisions of the State rule EPA interpreted those provisions to mean the subsections would expire from the approved SIP on that date (June 30, 2005).

Our May 9, 2005 (70 FR 24348) proposal addressed changes to each of these three provisions which would extend the expiration date to as late as June 30, 2006. Specifically, the State revised each of the three subsections to provide:

"This section expires on January 15, 2006, unless the commission submits a revised version of this section to the Environmental Protection Agency (EPA) for review and approval into the Texas state implementation plan. If the commission submits a revised version of this section, this section expires on June 30, 2006."

See 30 TAC, General Air Quality Rule 101, Subchapter F, subsections 101.221(g), 101.222(h), and 101.223(e).

Today, we are taking final action on the May 9, 2005 (70 FR 24348) proposal. Because we proposed to approve these revisions prior to the time the State completed its state rulemaking process, we compared the final version of the adopted State submission with the submission on which the proposed rulemaking was based. The comparison reveals no changes in the State's final submission. The change we are approving today will, in effect, extend the expiration date of the affected sections from June 30, 2005 to January 15, 2006, unless the State submits a replacement rule to EPA, which would have the effect of extending the

expiration date in the SIP to June 30, 2006.

The EPA believes it is important to reiterate our interpretation of the phrase in the State's rule, "submits a revised version of this section." If we receive a SIP submission of a state-adopted revised version of the specified sections prior to January 15, 2006, we will review the submission for completeness in accordance with our completeness regulations. See 40 CFR Part 51, Appendix V. If the State fails to submit an adopted rule by January 15, 2006, or submits a SIP that we determine is incomplete, the existing regulations will expire from the SIP effective January 15, 2006. If we find the submission complete, then the rule will expire from the SIP on June 30, 2006, or at an earlier date if so provided by a replacement rule that we approve into the Texas SIP prior to June 30, 2006.

The EPA intends to work with the State during the State's rulemaking process to identify any issues that would prevent our full approval of the replacement rule. Although we cannot prejudge our ultimate decision on a future SIP submission prior to our review of such revisions and our consideration of any public comments in response to our proposed action on such submission, we will attempt to identify any issues that would prevent our full approval of the replacement rule during the State's rulemaking process and any preliminary discussions we may have with the State.

We are granting limited, rather than full, approval of this SIP submittal. We are granting limited approval of this rule because we granted limited approval of the regulations which are modified by this revision. Although this action will extend the expiration date of sections 101.221, 101.222, and 101.223, the basis for our limited approval of the State's excess emissions rules remains unchanged as explained in our March 30, 2005 (70 FR 16129) rulemaking action.

2. What Documents Did We Use in the Evaluation of This Rule?

The EPA's interpretation of the Act on excess emissions occurring during SSM is set forth in the following documents: a memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions;" EPA's clarification to the above policy memorandum dated February 15, 1983, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation; EPA's policy