ENFORCEMENT OF PROTECTION
AGENCY

40 CFR Part 52

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

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

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

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

ADDRESSES: EPA has established a
docket for this action under Docket ID
documents in the docket are listed in the
http://www.regulations.gov index.
Although listed in the index, some
information is not publicly available, e.g.,
CBI or other information whose
disclosure is restricted by statute.
Certain other material, such as
copyrighted material, will be publicly
available only in hard copy. Publicly
available docket materials are available
either electronically in http://
www.regulations.gov or in hard copy
at the Air Planning Section (6PD–L),
Environmental Protection Agency, 1445
Ross Avenue, Suite 700, Dallas, Texas
75202–2733. The fil 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 Deeso at
214–665–7253 to make an appointment.
If possible, please make the
appointment at least two working
days in advance of your visit. There will be
a 15 cent per page fee for making
photocopies of documents. On the
day of the visit, please check in at the EPA
Region 6 reception area at 1445 Ross
Avenue, Suite 700, Dallas, Texas.
The State submittal related to this SIP
revision, and which is part of the EPA
docket, is also available for public
inspection at the State Air Agency listed
below during official business hours by
appointment:
Texas Commission on Environmental
Quality, Office of Air Quality, 12124
Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT:
If you have questions concerning today’s
final rule, please contact Ms. Adina
Wiley (6PD–R), Air Permits Section,
Environmental Protection Agency,
Region 6, 1445 Ross Avenue (6PD–R),
Suite 1200, Dallas, TX 75202–2733.
The telephone number is (214) 665–2115.
Ms. Wiley can also be reached via
electronic mail at wiley.adina@epa.gov.

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

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I. What final action is EPA taking?

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

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

EPA acted on the above SIP revisions through a
direct final rulemaking and accompanying
proposed rule action on November 16, 2010, at 75 FR 69884 and
75 FR 69909, respectively. In our direct
final action we stated that we would
withdraw our direct final approval if we
received relevant adverse comments
before December 16, 2010. Because EPA
received one adverse comment, we
withdrew our direct final action on
December 15, 2010. As we discussed in
our direct final and proposed
rulemaking actions, we are proceeding
with a final action and responding to
the comments received in this notice.

Today, we are approving the EBTA
program and subsequent revisions as we
proposed and find that they comply
with the CAA and EPA regulations, are
consistent with EPA policies, and will
improve air quality. This final approval
is being taken under parts C and D of
the CAA.

II. What is the background for this
action?

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

In our November 16, 2010, direct final
action, we presented our evaluation of
the EBTA program. Generally, SIP rules
must be enforceable and must not relax
existing requirements. See Clean Air Act
sections 110(a), 110(l), and 193. EPA’s
review of the January 3, 2000;
September 11, 2000; July 15, 2002; and
October 24, 2006 SIP revisions finds
that all 4 SIP submittals are consistent
with the requirements at 40 CFR Part 51
and are considered complete SIP
submittals in accordance with 40 CFR
Part 51, Appendix V. This detailed
analysis is available in the Technical
Support Document (TSD) for this
rulemaking. Additionally, we reviewed
the EBTA program with respect to EPA’s
Economic Incentive Program (EIP) Guidance “Improving Air Quality with Economic Incentive Programs” (EPA–452/R–01–001, January 2001) (EIP Guidance). Our analysis, as detailed in the TSD accompanying this rulemaking, finds that the EBTA program is consistent with the criteria for discretionary source specific emissions cap programs. The EBTA program will provide compliance flexibility to participating electric generating facilities in Texas and achieve the programmatic emission reduction goals of Texas SB 7. Further, EPA finds that the EBTA program is consistent with section 110(l) of the CAA and will not interfere with any applicable requirements concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act.

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

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

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

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

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not propose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 4, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control. Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.


Carl E. Edlund,

 Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart SS—Texas


The additions read as follows:

§ 52.2270 Identification of plan.

* * * 

(c) * * *
### EPA APPROVED REGULATIONS IN THE TEXAS SIP

<table>
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<th>State citation</th>
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<td>Program Audits and Reports</td>
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| **Division 2—Emissions Banking and Trading of Allowances** | | | | |
| Section 101.330  | Definitions                      | 12/16/1999                   | 1/3/2011 [Insert FR page number where document begins] | |
| Section 101.331  | Applicability                     | 12/16/1999                   | 1/3/2011 [Insert FR page number where document begins] | |
| Section 101.332  | General Provisions                | 12/16/1999                   | 1/3/2011 [Insert FR page number where document begins] | |
| Section 101.334  | Allowance Deductions              | 12/16/1999                   | 1/3/2011 [Insert FR page number where document begins] | |
| Section 101.335  | Allowance Banking and Trading     | 12/16/1999                   | 1/3/2011 [Insert FR page number where document begins] | |

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

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

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) luis.rodriguez1@dhs.gov.

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

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

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

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

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

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