



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2012-0205; FRL-9940-03--Region 6]

**Approval and Promulgation of Implementation Plans; Texas; El Paso
Particulate Matter Contingency Measures**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving under the Federal Clean Air Act (the Act) State Implementation Plan (SIP) revisions submitted by the State of Texas. These revisions pertain to contingency measures for particulate matter in the City of El Paso. The affected contingency measures are the paving of alleys and sweeping of streets.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2012-0205. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information 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 through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Jeffrey Riley, 214-665-8542,
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SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

The background for today’s action is discussed in detail in our August 19, 2015 proposal (80 FR 50248). In that notice, we proposed to approve revisions to the Texas SIP pertaining to contingency measures for controlling particulate matter (PM) with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM₁₀) in the City of El Paso. We did not receive any comments regarding our proposal.

II. Final Action

We are approving revisions to the Texas SIP pertaining to PM₁₀ dust control contingency measures in the City of El Paso. The State’s revisions submitted on March 7, 2012 amend rule 30 TAC section 111.147(1)(E) by removing the requirement to pave alleys at the rate of 15 miles/year, and replace it with the following requirements:

- 1) All new alleys must be paved;

2) Unpaved alleys may not be used for residential garbage and recycling collection;
and

3) The use of recycled asphalt product as defined in section 111.145 and section 111.147(1) may be used as an alternate means of particulate matter control for alleys.

We are also approving revisions to 30 TAC section 111.147(1) that define reclaimed asphalt pavement, and 30 TAC section 111.147(2) that changes the sweeping frequency requirement from four to three times per year in the city limits and from six to four times per week in the El Paso central business district. This action is being taken under section 110 of the Act.

III. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

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, the 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 (Public Law 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 19, 2015.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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:

a. In paragraph (c), the table titled “EPA Approved Regulations in the Texas SIP” is amended by revising the entry for Section 111.147.

b. In paragraph (e), the second table titled “EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding an entry at the end for “Revision to El Paso PM10 Attainment Demonstration SIP”.

The revision and addition read as follows:

§52.2270 Identification of plan

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(c) * * *

State Citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
* * * * *				
Chapter 111 (Reg 1) – Control of Air Pollution from Visible Emissions and Particulate Matter				
Subchapter A: Visible Emissions and Particulate Matter				
* * * * *				
Division 4: Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots				
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Section 111.147	Roads, Streets, and Alleys	1/25/2012	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
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(e) * * *

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

Name of SIP provision	Applicable geographic or nonattainme nt area	State submittal/ effective date	EPA approval date	Comments
* * * * *				
Revision to El Paso PM ₁₀ Attainment Demonstration SIP (dust control contingency measures)	El Paso, TX	3/7/2012	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	

[FR Doc. 2015-31310 Filed: 12/11/2015 8:45 am; Publication Date: 12/14/2015]