

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[EPA-R06-OAR-2012-0100; FRL-9795-3]****Approval and Promulgation of Implementation Plans; Texas; Reasonably Available
Control Technology for the 1997 8-Hour Ozone National Ambient Air Quality Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing its proposal to approve revisions to the Texas State Implementation Plan (SIP) for the Houston/Galveston/ Brazoria (HGB) 1997 8-Hour ozone nonattainment Area (Area). The HGB Area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties. Specifically, we are finalizing our proposed approval of portions of two revisions to the Texas SIP submitted by the Texas Commission on Environmental Quality (TCEQ) as meeting certain Reasonably Available Control Technology (RACT) requirements for Volatile Organic Compounds (VOC), and Oxides of Nitrogen (NO_x) in the HGB Area. We are also finalizing our proposal to approve the 2007 Voluntary Mobile Emission Reduction Program (VMEP) commitments for the HGB Area. This action is in accordance with section 110 of the federal Clean Air Act (the Act, CAA).

DATES: This rule will be effective on **[Insert date 30 days from date of publication]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2012-0100. All documents in the docket are listed on the 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 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 file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30am and 4:30pm 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.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-6691, fax (214) 665-7263, e-mail address shar.alan@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” refer to EPA.

Outline

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- F. Is Texas' approach to RACT determination for CTG source categories based on the June 13, 2007 and April 6, 2010 submittals acceptable?
- G. Is Texas' approach to RACT determination for NO_x sources based on the June 13, 2007 and April 6, 2010 submittals acceptable?
- H. Is Texas' approach to RACT determination for VOC and NO_x sources based on the June 13, 2007 and April 6, 2010 submittals acceptable?

III. Final Action

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I. Background

A. What actions are we approving?

In EPA's September 19, 2012 (77 FR 58063) rulemaking action we proposed to approve portions of revisions to the Texas SIP submitted to EPA in two separate letters dated June 13,

2007 and April 6, 2010 from TCEQ. We are finalizing our proposed approval as described below.

1. The June 13, 2007 submittal:

We are finalizing our proposal to approve the June 13, 2007 submittal, sent to EPA from TCEQ, which in part, included the Voluntary Mobile Emission Reduction Program (VMEP) commitments as strategies to complement existing regulatory programs through voluntary, non-regulatory changes in local transportation activities or changes in in-use vehicle and engine composition. Economic incentive provisions are also available in sections 182 and 108 of the Act. Credits generated through VMEP can be counted toward attainment and maintenance of the NAAQS. Due to the voluntary nature of this program, only up to 3% of the total future year emissions reductions required to attain an appropriate NAAQS may be claimed under the VMEP policy guidance.

In addition, the June 13, 2007 submittal included an analysis intended to demonstrate RACT was being implemented in the HGB Area as required by the CAA (Appendix D of the submittal).

2. The April 6, 2010 submittal:

Texas supplemented the RACT analysis contained in the June 13, 2007 submittal as a part of the April 6, 2010 revision to the Texas SIP. We are finalizing the proposal to find, based on the analysis in Appendix D of the April 6, 2010 submittal, in conjunction with the June 13, 2007 submission, that Texas has met certain RACT requirements under section 182(b). Appendix D of the April 6, 2010 submittal is titled “Reasonably Available Control Technology

Analysis.” See section B of the September 19, 2012 (77 FR 58063) proposal for more information on RACT evaluation for the HGB Area.

B. When did the public comment period expire?

The public comment period for the 77 FR 58063 proposed approval ended on October 19, 2012, and we received relevant comments from TCEQ and the 8-Hour Ozone SIP Coalition (the Coalition) on this rulemaking action during its comment period. See section II below.

II. Evaluation

A. What are the public comments and EPA’s response to them?

Comment: TCEQ and the Coalition both expressed their support for the September 19, 2012 (77 FR 58063) rulemaking action. TCEQ stated that EPA should expedite approval of RACT SIP for other CTG categories not included in the proposal.

Response: The EPA appreciates the commenters’ support of our proposed approval. The EPA is cognizant of other VOC CTG categories in the HGB Area. As stated in the proposal, EPA intends to act upon other VOC CTG categories (including the negative declarations) separately in a different rulemaking action.

Comment: TCEQ requested that the EPA provide clarification on how long the VMEP measures submitted on June 13, 2007 must remain in place. TCEQ interprets this time period to be through the year 2009.

Response: The basic framework for ensuring SIP credit for VMEPs is spelled out in guidance issued under a memorandum from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, dated October 24, 1997, entitled “Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs).” (the

Policy). For VMEP credits to be approvable they should be quantifiable, surplus, enforceable, permanent, and adequately supported. The Policy states that “emission reductions produced by the VMEP must continue at least for as long as the time period in which they are used by applicable SIP demonstrations. The VMEP need not continue forever to generate permanent emissions reductions, but must specify an appropriate period of implementation in the SIP.” See page 19 of the Policy. In addition, “the voluntary program should be permanent unless it is replaced by another measure (through a SIP revision) or the State demonstrates in a SIP revision that the emission reductions from the voluntary program are no longer needed.” See page 5 of the Policy. The VMEP for an area can be revised by a SIP revision that substitutes or adds other VMEP measures, if needed. The 2007 VMEP measures are considered permanent and remain part of Texas SIP until the states revises its SIP, or demonstrates in a SIP revision that the emission reductions (for example; the 2.82 tons per day of NOx reductions) from the voluntary program are no longer needed. In 2010, Texas revised the 2007 VMEP measures as a part of the HGB Area attainment demonstration plan. See section 4.6.2.2: Voluntary Mobile Emission Reduction Program (VMEP) and Appendix H of the 2010 submittal. Based on above Policy statements and the supporting record/documentation, the 2010 VMEP measures, submitted with the 2010 HGB Area attainment demonstration plan, supersede and replace the 2007 VMEP measures. We will be taking action on the 2010 VMEP measures in a different rulemaking. In short, EPA interprets the 2007 VMEP measures remain in place through the year 2009 (that is until the year 2010) when the State updated its HGB Area attainment demonstration plan.

This concludes our response to the comments received on the September 19, 2012 (77 FR 58063) proposal during comment period. As a result of comments received no changes were made to the proposed approval action.

B. What is TCEQ’s approach and analysis to RACT in the June 13, 2007 submittal?

Under sections 182(b)(2)(A) and (B), states must insure RACT is in place for each source category for which EPA issued a CTG. As a part of its June 13, 2007 submittal TCEQ conducted a RACT analysis to demonstrate that the RACT requirements for CTG sources in the HGB 8-Hour ozone nonattainment Area have been fulfilled. The TCEQ revised and supplemented this analysis in the April 6, 2010 submittal. For information on how TCEQ conducted its RACT analysis see section E of the September 19, 2012 (77 FR 58065) proposal. We are finalizing our proposal finding that TCEQ has properly conducted its analysis, and their approach to control requirements are in agreement with the CAA RACT requirements for VOC sources in the HGB Area listed in Table 1 below.

C. What CTG source categories are we addressing in this action?

Table 1 below contains a list of VOC CTG source categories, and their corresponding sections of 30 TAC Chapter 115 that fulfill the applicable RACT requirements.

Table 1 - CTG Source Categories and Their Corresponding Texas VOC RACT Rules

Source Category in HGB Area	Fulfilling RACT Requirement, 30 TAC Chapter 115
Bulk Gasoline Plants	§115.211 – 219
Natural Gas/Gasoline Processing	§115.352 – 359
Synthetic Organic Chemical Manufacturing Industry – Polymer & Resin Manufacturing	§115.352 – 359
Gasoline Tank Trucks & Vapor Collection Systems	§115.211 – 219 and §115.234 – 239
Refineries – Leaks from Equipment	§115.352 – 359
Synthetic Organic Chemical Manufacturing	§115.120 – 129

Source Category in HGB Area	Fulfilling RACT Requirement, 30 TAC Chapter 115
Industry – High Density Resins	
Synthetic Organic Chemical Manufacturing Industry – Synthesized Pharmaceutical Products	§115.531 – 539
Petroleum Liquid Storage – External Floating Roof Tanks	§115.112 – 119
Refineries – Vacuum Producing Systems, Wastewater Separators, Unit Turnarounds	§115.311 – 319 and §115.131 – 139
Synthetic Organic Chemical Manufacturing Industry – Air Oxidation Processes	§115.120 – 129
Synthetic Organic Chemical Manufacturing Industry – Reactor Processes & Distillation Operations	§115.120 – 129
Shipbuilding and Ship Repair	§115.420 – 429
Solvent Metal Cleaning	§115.412 – 419 and §115.420 – 429
Gasoline Service Stations	§115.221 – 229
Petroleum Liquid Storage – Fixed Roof Tanks	§115.112 – 119
Tank Trucks – Gasoline Loading Terminals	§115.211 – 219 or §115.221 – 229

In addition, Texas declared that there are no existing major sources of rubber tire manufacturing, identified with the Standard Industrial Classification (SIC) 3011, in the HGB Area. As such, TCEQ does not have to adopt VOC regulations for this source category at this time for the HGB Area. We are also finalizing our proposed approval of Texas' negative declaration for this source category.

D. Does the revision to 30 TAC Chapter 115 of the June 13, 2007 submittal meet RACT for liquid storage sources in the HGB Area?

On March 29, 2010 (75 FR 15348) we approved revisions to 30 TAC, Chapter 115 Control of Air Pollution from Volatile Organic Compounds. On September 19, 2012 (77 FR

58063), we proposed approval of these revisions as satisfying RACT requirements for liquid storage sources in the HGB Area. We are now finalizing our proposed approval of these revisions and finding that by implementing these measures Texas is meeting the VOC RACT for liquid storage sources in the HGB Area.

E. Is Texas' approach to major Non-CTG sources for RACT determination in the HGB Area acceptable?

Under section 182(b)(2)(C), states must assure that major sources not covered by a CTG have RACT in place. Texas has identified a list, in its Appendix D of the April 6, 2010 submittal, of major VOC sources in the HGB Area to determine if any do not have RACT level controls in place and do not fall into the identified sectors for which EPA has issued a CTG. For information on how TCEQ reviewed the point source emissions inventory and title V databases to identify all major sources of VOC emissions see section I of the September 19, 2012 (77 FR 58063). As a part of our approval of the 1-Hour ozone attainment demonstration plan for the HGB Area at 70 FR 58136, October 5, 2005, and 71 FR 52676, September 6, 2006, we stated that Texas has met RACT for VOC and NO_x sources. In its April 06, 2010, submittal to EPA Texas identified major Non-CTG sources, certified that it has RACT in place, and we proposed approval of their determination at September 19, 2012 (77 FR 58063). We are finalizing our proposed approval finding that the Texas SIP meets the RACT requirements for the major Non-CTG sources of VOC in the HGB Area under the 1997 8-Hour ozone NAAQS.

F. Is Texas' approach to RACT determination for CTG source categories based on the June 13, 2007 and April 6, 2010 submittals acceptable?

As a part of our action on the 1-Hour ozone attainment demonstration plan for the HGB Area at 70 FR 58136, October 5, 2005; and 71 FR 52676, September 6, 2006, we stated that Texas has met RACT for VOC and NO_x sources. In its submittals to EPA, TCEQ stated that it has reviewed the HGB VOC rules, certified that they satisfy RACT requirements for the 8-Hour ozone standard by the application of control technology that is reasonably available considering technological and economic feasibility, and we proposed approval of their determination on September 19, 2012 (77 FR 58063). For more information see section J of the September 19, 2012 (77 FR 58063). We are finalizing the proposed approval that VOC control measures in Chapter 115 meet RACT requirements for CTG sources of VOC in the HGB Area under the 1997 8-Hour ozone NAAQS. By implementing these control requirements (Chapter 115), Texas is satisfying the RACT requirements for CTG source categories identified in Table 1 of this document in the HGB Area under the 1997 8-Hour ozone standard.

G. Is Texas' approach to RACT determination for NO_x sources based on the June 13, 2007 and April 6, 2010 submittals acceptable?

As a part of our approval of the 1-Hour ozone attainment demonstration plan for the HGB Area at 70 FR 58136, October 5, 2005; and 71 FR 52676, September 6, 2006, we stated that Texas has met RACT for VOC and NO_x sources. In its submittals to EPA, TCEQ stated that it has reviewed the HGB NO_x rules, certified that they satisfy RACT requirements for the 8-Hour ozone standard by the application of control technology that is reasonably available considering technological and economic feasibility, and we proposed approval of their determination on September 19, 2012 (77 FR 58063). For more information see section L of the September 19, 2012 (77 FR 58063). We are finalizing the proposed approval that NO_x control

measures in Chapter 117 meet RACT requirements for major sources of NO_x in the HGB Area under the 1997 8-Hour ozone NAAQS. By implementing these control requirements (Chapter 117), Texas is satisfying the RACT requirements for NO_x source in the HGB Area under the 1997 8-Hour ozone standard.

H. Is Texas' approach to RACT determination for VOC and NO_x sources based on the June 13, 2007 and April 6, 2010 submittals acceptable?

The purpose of 30 TAC Chapter 115 and 117 rules for the HGB Area is to establish reasonable controls on the emissions of ozone precursors. Texas reviewed its VOC and NO_x rules and certified that its rules satisfy RACT requirements, and we proposed approval of their determination at September 19, 2012 (77 FR 58063). For more information see sections K and L of the September 19, 2012 (77 FR 58063). As such, and based upon the above 3 sections (sections E, F, and G), we are finalizing our proposed approval finding that, for major sources of NO_x, CTG VOC categories identified in Table 1, and Non-CTG VOC sources, Texas has RACT-level controls in place for the HGB Area under the 1997 8-Hour ozone standard.

III. Final Action

Today, we are finalizing our proposal to find that for VOC CTG categories identified in Table 1 and all major Non-CTG VOC sources, and for NO_x, Texas has RACT-level controls in place for the HGB Area under the 1997 8-Hour ozone standard. The EPA had previously approved RACT for VOC and NO_x into Texas' SIP under the 1-Hour ozone standard. We are also finalizing our proposal to approve the 2007 VMEP into Texas SIP.

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 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;
- 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); and
- 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 **[insert date 60 days from 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 20, 2013.

Ron Curry,
Regional Administrator,
Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 Section 52.2270, the second table in paragraph (e) entitled “EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding three new entries at the end.

§ 52.2270 Identification of plan.

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(e) * * * *

EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* * * * *				
Voluntary Mobile Emission Reduction Program (VMEP)	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties, TX.	June 13, 2007	[Insert date of publication in the Federal Register], [Insert FR page number where document begins].	
NOx RACT finding for the 1997 8-hour ozone NAAQS	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties, TX.	April 6, 2010	[Insert date of publication in the Federal Register], [Insert FR page number where document begins].	

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
VOC RACT finding for the 1997 8-hour ozone NAAQS	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties, TX.	April 6, 2010	[Insert date of publication in the Federal Register], [Insert FR page number where document begins].	For selected categories.

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