

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R06-OAR-2004-TX-0014; FRL-8216-2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Rules for the Control of Highly Reactive Volatile Organic Compounds in the Houston/Galveston/Brazoria Ozone Nonattainment Area**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is approving rules adopted by the Texas Commission on Environmental Quality (TCEQ) for the control of highly reactive Volatile Organic Compounds (HRVOCs) in the Houston/Galveston/Brazoria (HGB) ozone nonattainment area. These rules for the control of HRVOCs supplement Texas' existing rules for controlling volatile organic compounds (VOC) by providing more extensive requirements for certain equipment in HRVOC service. These additional controls of HRVOC emissions will help to attain and maintain the national ambient air quality standards (NAAQS) for ozone in HGB.

DATES: This rule is effective on October 6, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2004-TX-0014. 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., 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 through <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 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 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 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: Carl Young, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7242; fax number 214-665-7263; e-mail address young.carl@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we", "us", or "our" are used, we mean the EPA.

What Action is EPA Taking?

We are approving portions of revisions to the SIP submitted by the State of Texas in letters dated January 23, 2003, November 7, 2003, March 26, 2004 and December 17, 2004. We are approving the portions of these revisions that pertain to the control of HRVOCs. These rules, which are codified at 30 TAC Chapter 115, Subchapter H, apply to facilities in the HGB ozone nonattainment area. We are also approving the associated revisions to the definitions section of 30 Texas Administrative Code (TAC) 115.10. The revisions are approved pursuant to section 110 and part D of the Federal Clean Air Act (the Act).

What is the Background for this Action?

These rules to control HRVOCs were adopted by TCEQ based on recent findings that certain highly reactive chemicals (ethylene, propylene, 1,3 butadiene and butenes) contribute disproportionately to the ozone problem in the HGB area. EPA issued a proposed approval of these rule revisions on April 7, 2005 (70 FR 17640). In EPA's proposed approval, we explained the rationale for our approval and solicited comments for 30 days.

What Comments Were Received on the Proposed Approval?

Only one comment letter was received regarding the proposed approval and it was supportive of the proposed action.

What does Federal approval of a State regulation mean to me?

Enforcement of the State regulation before and after it is incorporated into the federally approved SIP is primarily

a state function. However, once the regulation is federally approved, the EPA and the public may take enforcement action against violators of these regulations if the state fails to do so. In addition, only regulations that have been federally approved can be credited toward an area's attainment or rate of progress plan. EPA has proposed approval of the ozone attainment plan for the HGB area. The measures to control HRVOCs in this approval are part of the control strategy to demonstrate attainment of the ozone standard.

What General Requirements do the Rules Establish?

The rules establish improved monitoring requirements for flares, cooling towers, process vents and pressure relief valves. The rules establish a 1200 lb/hour site-wide short-term limit on HRVOCs for sources in Harris County. In addition, the improved source monitoring provides the information necessary for sources to demonstrate compliance with an annual cap and trade program controlling emissions of HRVOCs from cooling tower, process vents, pressure relief devices and flares contained in 30 TAC Chapter 101. EPA proposed approval of the HRVOC cap and trade program on October 5, 2005 (70 FR 58112). Also, to better control fugitive emissions of HRVOCs, the rules being approved here establish more stringent leak detection and repair work practice requirements.

Why are We Approving these Rules?

The addition of these rules for the control of HRVOCs will supplement Texas' existing rules controlling volatile organic compounds (VOC) and provide improvements to the Texas SIP's VOC Reasonably Available Control Technology (RACT) rules. These additional controls of HRVOC emissions will help to attain and maintain the national ambient air quality standards (NAAQS) for ozone in HGB. Today's actions makes the revised regulations federally enforceable.

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 and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, A 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 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 November 6, 2006. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 24, 2006.

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 SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended under Chapter 115 (Reg 5), immediately following the entry for Section 115.629, by adding a new centered heading "Subchapter H—Highly-Reactive Volatile Organic Compounds", followed by new entries for Sections 115.720 to 115.789 to read as follows.

§ 52.2270 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
* * * * *				
Chapter 115 (Reg 5)—Control of Air Pollution From Volatile Organic Compounds				
* * * * *				
Section 115.629	Affected Counties and Compliance Schedules.	10/27/04	02/10/05, 70 FR 7043.	
Subchapter H—Highly-Reactive Volatile Organic Compounds				
Division 1: Vent Gas Control				
Section 115.720	Applicability and Definitions	12/01/2004	9/06/2006 [Insert FR citation from published date].	

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Section 115.722	Site-wide Cap and Control Requirements.	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Section 115.725	Monitoring and Testing Requirements	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Section 115.726	Recordkeeping and Reporting Requirements.	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Section 115.727	Exemptions	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Section 115.729	Counties and Compliance Schedules	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Division 2: Cooling Tower Heat Exchange Systems				
Section 115.760	Applicability and Cooling Tower Heat Exchange System Definitions.	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Section 115.761	Site-wide Cap	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Section 115.764	Monitoring and Testing Requirements	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Section 115.766	Recordkeeping and Reporting Requirements.	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Section 115.767	Exemptions	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Section 115.769	Counties and Compliance Schedules	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Division 3: Fugitive Emissions				
Section 115.780	Applicability	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Section 115.781	General Monitoring and Inspection Requirements.	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Section 115.782	Procedures and Schedule for Leak Repair and Follow-up.	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Section 115.783	Equipment Standards	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Section 115.786	Recordkeeping Requirements	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Section 115.787	Exemptions	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Section 115.788	Audit Provisions	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
Section 115.789	Counties and Compliance Schedules	12/01/2004	9/06/2006 [Insert <i>FR</i> citation from published date].	
*	*	*	*	*

* * * * *

[FR Doc. 06-7409 Filed 9-5-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R06-OAR-2005-TX-0033; FRL-8216-6]

Approval and Promulgation of State Implementation Plans; Texas; Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program for the Houston/Galveston/Brazoria Ozone Nonattainment Area**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is approving revisions to the Texas State Implementation Plan concerning the Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program for the Houston/Galveston/Brazoria ozone nonattainment area.

DATES: This rule is effective on October 6, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2005-TX-0033. 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., 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 through <http://www.regulations.gov> or in hard copy at the Air Permitting Section (6PD-R), 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 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: Adina Wiley, Air Permitting Section (6PD-R), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone 214-665-2115, wiley.adina@epa.gov.

SUPPLEMENTARY INFORMATION:

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

Outline

- I. What action is EPA taking?
- II. What is the background for this action?
- III. What are EPA’s responses to comments received on the proposed action?
- IV. What does Federal approval of a State regulation mean to me?
- V. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is approving the Highly Reactive Volatile Organic Compound Emissions Cap and Trade (HECT) Economic Incentive Program (EIP), published at Texas Administrative Code (TAC) Title 30, Chapter 101 General Air Quality Rules, Subchapter H Emissions Banking and Trading, Division 6, sections 101.390-101.394, 101.396, 101.399-101.401, and 101.403. These revisions were adopted by the Texas Commission on Environmental Quality (TCEQ) on December 01, 2004, and submitted to EPA on December 17, 2004, as a revision to the State Implementation Plan (SIP). As discussed in our proposed action at 70 FR 58144, we conclude that the HECT program is consistent with section 110(l) of the Clean Air Act. We proposed approval of the HECT program as an element of the Texas SIP for the Houston/Galveston/Brazoria (HGB) ozone nonattainment area on October 5, 2005 (70 FR 58138).

II. What is the background for this action?

The HECT program was adopted as a state regulation on December 1, 2004. The TCEQ developed the program as part of its mid-course review of the 1-hour ozone attainment plan for the HGB ozone nonattainment area. The mid-course review showed that ozone reductions comparable to those achieved by the 90 percent reduction in industrial nitrogen oxide (NO_x) emissions and the enforceable commitments for an additional 42 tons per day of NO_x reductions required in the November 2001 (66 FR 57160)

approved SIP could be achieved through a combination of 80 percent reduction in industrial NO_x emissions and additional targeted control of certain highly-reactive volatile organic compounds (HRVOCs). TCEQ has chosen to revise its attainment strategy accordingly, decreasing the emphasis on NO_x control and requiring additional reductions of HRVOCs.

In our proposed approval of the HECT program, we stated that final action on the HECT would not occur until we published final approval of the attainment demonstration, which is being processed concurrently with this approval. For a further discussion of the attainment demonstration and EPA’s responses to comments on this action, please see our action on the attainment demonstration (EPA-R06-OAR-2005-TX-0018), which is being published elsewhere in today’s **Federal Register**.

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

EPA’s responses to comments submitted by Galveston-Houston Association for Smog Prevention (GHASP), Environmental Defense (Texas Office), the Lone Star Chapter of the Sierra Club, and Public Citizen (Texas Office) on November 4, 2005, are as follows. EPA has summarized the comments below; the complete comments can be found in the administrative record for this action (EPA-R06-OAR-2005-TX-0033). While the comments generally discuss VOC trading programs, we are only addressing comments specific to HRVOCs and the HECT.¹

Comment 1: The EPA uses the term “less-reactive VOC”, but the TCEQ term “other VOC” (OVOC) is preferable. Some of the other VOCs are actually highly reactive on a molar basis, but are not emitted as widely or in as great a quantity as the designated HRVOCs.

Response to Comment 1: We agree that the term “other VOC” (OVOC) will

¹During the comment period, EPA did not receive comments regarding environmental justice and the HECT program. However, during the finalization process we have reevaluated our interpretation of the definition of Environmental Justice as found in Executive Order 12898. In our proposed approval of the HECT program, we stated that “environmental justice concerns arise when a trading program could result in disproportionate impacts on communities populated by racial minorities, people with low incomes, or Tribes.” On further review, we believe the following description is more consistent with E.O. 12898: “Environmental justice concerns can arise when a final rule, such as a trading program, could result in disproportionate burdens on particular communities, including minority or low income communities.” This revised language does not alter our determination that the HECT program does not raise environmental justice concerns.