

under 39 U.S.C. 3403–06 and International Mail Manual 270.

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Stanley F. Mires,

Chief Counsel, Legislative.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R06–OAR–2007–0528; FRL–8895–3]

#### Approval and Promulgation of Air Quality Implementation Plans; Texas; Reasonable Further Progress Plan, Motor Vehicle Emissions Budgets, and 2002 Base Year Emissions Inventory; Houston-Galveston-Brazoria 1997 8-Hour Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the Texas State Implementation Plan (SIP) to meet the Reasonable Further Progress (RFP) and Emissions Inventory requirements of the Clean Air Act (CAA) for the Houston-Galveston-Brazoria (HGB) moderate 1997 8-hour ozone nonattainment area. EPA is also approving the RFP motor vehicle emissions budgets (MVEBs) associated with the revision. EPA is approving the SIP revision because it satisfies the RFP and Emissions Inventory requirements for 1997 8-hour ozone nonattainment areas classified as moderate and demonstrates the required progress in reducing ozone precursors. EPA is approving the revision pursuant to section 110 and part D of the CAA and EPA's regulations.

**DATES:** This direct final rule will be effective June 22, 2009 without further notice unless EPA receives relevant adverse comments by May 22, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA–R06–OAR–2007–0528, by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>.
- Follow the online instructions for submitting comments.
- EPA Region 6 “Contact Us” Web site: <http://epa.gov/region6/>

*r6coment.htm*. Please click on “6PD (Multimedia)” and select “Air” before submitting comments.

• *E-mail:* Mr. Guy Donaldson at [donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov). Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

• *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.

• *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

• *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket No. EPA–R06–OAR–2007–0528. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](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 [www.regulations.gov](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 during official business hours, by appointment, at the Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Emad Shahin, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–6717; fax number 214–665–7263; e-mail address [shahin.emad@epa.gov](mailto:shahin.emad@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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

#### Outline

- I. What Action Is EPA Taking?
- II. What Is a SIP?
- III. What Is the Background for This Action?
- IV. What Is EPA's Evaluation of the Revision?
- V. Statutory and Executive Order Reviews

#### I. What Action Is EPA Taking?

We are approving a revision to the Texas SIP, submitted to meet the Emissions Inventory and RFP requirements of the CAA for the HGB moderate 1997 8-hour ozone nonattainment area. The revision was adopted by the State of Texas on May 23, 2007 and submitted to EPA on May 30, 2007. We are approving the 2002 Base Year Emissions Inventory, the 15% RFP plan, and the RFP 2008 MVEBs. The RFP plan demonstrates that oxides of nitrogen (NO<sub>x</sub>) emissions will be

reduced at least 15 percent for the period of 2002 through 2008. The volatile organic compound (VOC) MVEB is 86.77 tons per day (tpd), and the NO<sub>x</sub> emissions budget is 186.13 tpd. We are approving the SIP revision because it satisfies the Emissions Inventory and RFP requirements for 1997 8-hour ozone nonattainment areas classified as moderate, and demonstrates the necessary further progress in reducing ozone precursors.<sup>1</sup> We are approving the MVEBs included in this plan because these levels of motor vehicle emissions have been shown to be consistent with meeting the RFP requirements. We are approving the revision pursuant to section 110 and part D of the CAA and EPA's regulations.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on June 22, 2009 without further notice unless we receive relevant adverse comment by May 22, 2009. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## II. What Is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that air quality meets the national ambient air quality standards (NAAQS) established by EPA. NAAQS are established under section 109 of the CAA and currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

A SIP is a set of air pollution regulations, control strategies, other

means or techniques, and technical analyses developed by the state, to ensure that the state meets the NAAQS. It is required by section 110 and other provisions of the CAA. A SIP protects air quality primarily by addressing air pollution at its point of origin. A SIP can be extensive, containing state regulations or other enforceable documents, and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each state must submit regulations and control strategies to EPA for approval and incorporation into the federally enforceable SIP.

## III. What Is the Background for This Action?

Inhaling even low levels of ozone, a key component of urban smog, can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It can also worsen bronchitis and asthma, and reduce lung capacity. VOC and NO<sub>x</sub> are known as "ozone precursors", as VOCs react with NO<sub>x</sub>, oxygen, and sunlight to form ozone. The CAA requires that areas not meeting the NAAQS for ozone demonstrate RFP in reducing emissions of ozone precursors.

EPA promulgated, on July 18, 1997, a revised 8-hour ozone standard of 0.08 parts per million (ppm), which is more protective than the previous 1-hour ozone standard (62 FR 38855).<sup>2</sup> On April 30, 2004, EPA published designations and classifications for the revised 1997 8-hour ozone standard (69 FR 23936). HGB was classified as a moderate nonattainment area under the 1997 8-hour ozone standard on June 15, 2004. The HGB 1997 8-hour nonattainment area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties. On November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR 31727), EPA published the Phase 2 final rule for implementation of the 8-hour standard that addressed, among other things, the RFP control and planning obligations as they apply to areas designated nonattainment for the 1997 8-hour ozone NAAQS. In the Phase 1 Rule, RFP was defined in § 51.900(p) as meaning for the purposes of the 1997 8-hour NAAQS, the progress reductions required under sections 172(c)(2), 182(b)(1), 182(c)(2)(B) and 182(c)(2)(C) of the CAA. In section 51.900(q), rate of progress (ROP), was defined as meaning for purposes of the

1-hour NAAQS, the progress reductions required under sections 172(c)(2), 182(b)(1), 182(c)(2)(B), and 182(c)(2)(C) of the CAA (see 69 FR 23997).

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Rule in *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the court modified the scope of vacatur of the Phase 1 Rule. See 489 F.3d 1245 (DC Cir. 2007), *cert. denied*, 128 S.Ct. 1065 (2008). The court vacated those portions of the Phase 1 Rule that provide for regulation of the 1997 8-hour ozone NAAQS in some nonattainment areas under subpart 1 in lieu of subpart 2. The decision held that EPA must retain the following 1-hour ozone NAAQS measures: New source review, section 185 penalties, and contingency plans for failure to meet RFP and attainment milestones. The decision does not affect the requirements for areas classified under subpart 2, such as the HGB area, to submit a reasonable further progress plan for the 1997 8-hour ozone NAAQS. Litigation on the Phase 2 Rule is pending before the DC Circuit Court of Appeals.

Section 182 of the CAA and EPA's 1997 8-hour ozone regulations<sup>3</sup> require a state, for each 1997 8-hour ozone nonattainment area that is classified as moderate, to submit an emissions inventory and a RFP plan to show how the state will reduce emissions of ozone precursors. The HGB moderate 1997 8-hour ozone nonattainment area has a maximum attainment date of June 15, 2010, that is beyond five years after designation. In addition, the HGB area has an approved 15% VOC Rate of Progress plan under the 1-hour ozone standard (November 14, 2001, 66 FR 57160). (Rate of Progress refers to reasonable further progress for the 1-hour ozone standard.) For a moderate area with an attainment date of more than five years after designation, the RFP plan must obtain a 15% reduction in ozone precursor emissions for the first six years after the baseline year (2002 through 2008).

Pursuant to CAA section 172(c)(9), RFP plans must include contingency measures that will take effect without further action by the state or EPA, which includes additional controls that would be implemented if the area fails to reach the RFP milestones. While the CAA does not specify the type of measures or quantity of emissions

<sup>1</sup> We reclassified the HGB nonattainment area too severe on October 1, 2008 (73 FR 56983). As a result of the reclassification, a revised RFP SIP is required in addition to the RFP SIP that we are acting on today.

<sup>2</sup> EPA issued a revised 8-hour ozone standard on March 27, 2008 (73 FR 16436). The designation and implementation process for that standard is just starting and does not affect EPA's action here.

<sup>3</sup> Reasonable further progress regulations are at 40 CFR 51.910, and emissions inventory regulations are at 40 CFR 51.915.

reductions required, EPA provided guidance interpreting the CAA that implementation of these contingency measures would provide additional emissions reductions of up to 3% of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) in the year following the RFP milestone year. For more information on contingency measures, please, see the April 16, 1992 General Preamble (57 FR 13498, 13510) and the November 29, 2005 Phase 2 8-hour ozone standard implementation rule (70 FR 71612, 71650). RFP plans must also include MVEBs, which are the allowable on-road mobile emissions an area can produce and continue to demonstrate RFP.

On May 23, 2007 Texas adopted as a SIP revision the RFP plan for the HGB area and submitted it to us on May 30, 2007. The plan documents a 15% NO<sub>x</sub> emission reduction in the HGB nonattainment area for the period between 2002 and 2008, and includes a 2002 baseline emissions inventory, MVEBs for 2008, and contingency measures. On June 15, 2007, we received a request from Governor Perry seeking voluntary reclassification of the HGB area. The Governor requested that we reclassify the HGB area from a moderate nonattainment area to a severe nonattainment area under the 8-hour ozone standard. We reclassified the area to severe on October 1, 2008 (73 FR 56983). Reclassification of the area to severe will require Texas to develop and submit a revised RFP SIP. For an area classified as severe, the required emissions reductions for VOC and/or NO<sub>x</sub> are 18% for the six-year period following the baseline emissions inventory year (2002), and an average of 3% per year for all remaining three-year periods after the first six-year period out to the area's attainment date (40 CFR 51.910(a)(1)(B)). The reclassification to severe set a new attainment date as expeditiously as practicable, but no later than June 15, 2019. Therefore, the revised RFP plan will have to address the years post 2008. Today's action addresses the plan for moderate ozone nonattainment area requirements for the years 2002 to 2008.

**IV. What Is EPA's Evaluation of the Revision?**

EPA has reviewed the revision for consistency with the requirements of EPA regulations. A summary of EPA's analysis is provided below. For a full discussion of our evaluation, please see our TSD.

*A. Texas Has an Approvable Base Year Emissions Inventory*

CAA sections 172(c)(3) and 182(a)(1) require an inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Texas has developed a 2002 base year emissions inventory for the HGB nonattainment area. The 2002 base year emissions inventory includes all point, area, non-road mobile, and on-road mobile source emissions. EPA reviewed the emission inventory and determined that it is approvable because it was developed in accordance with EPA guidance on emission inventory preparation. Table 1 lists the 2002 base year emissions inventory for the HGB area. For more detail on how emissions inventories were estimated, see the TSD.

**TABLE 1—HGB 2002 RFP BASE YEAR EMISSIONS INVENTORY**

2002 Base year inventory (tons/day)		
Source type	NO <sub>x</sub>	VOC
Point .....	339.48	297.12
Area .....	40.15	219.51
On-road Mobile	283.20	114.30
Non-road Mobile	167.74	112.37
Total .....	830.57	743.30

*B. Adjusted Base Year Inventory and 2008 RFP Target Levels*

The 2002 base year emissions inventory referenced above is the starting point for calculating RFP. Next, CAA section 182(b)(2)(C) explains that the baseline from which emission reductions are calculated should be determined as outlined pursuant to section 182(b)(1)(B). Section 182(b)(1)(B) and 40 CFR 51.910 require that the base year inventory must be adjusted to exclude certain emissions specified in section 182(b)(1)(D). This requires that the baseline exclude emission reductions due to Federal Motor Vehicle Control Programs (FMVCP) promulgated by the Administrator by January 1, 1990, and emission reductions due to the regulation of Reid Vapor Pressure promulgated by the Administrator prior to the enactment of the Clean Air Act Amendments of 1990. These measures are not creditable.

The result (after the adjustment) is the "adjusted base year inventory." The required RFP 15% reduction is calculated by multiplying the adjusted base year inventory by 0.15. This figure is subtracted from the adjusted base year inventory, resulting in the target level of emissions for the milestone year (2008).

Table 2 features a summary of the adjusted base year inventory (row c), required 15% reductions (row d), and 2008 target level of emissions (row e), as described above. Texas relied on reductions of NO<sub>x</sub> emissions to demonstrate RFP.

**TABLE 2—CALCULATION OF HGB REQUIRED NO<sub>x</sub> TARGET LEVEL OF EMISSIONS**

Description	NO <sub>x</sub> (tons/day)
a. 2002 Emission Inventory ..	830.57
b. Non-creditable Reductions, 2002–2008 .....	42.20
c. 2002 Adjusted to 2008 (a – b) .....	788.37
d. 15% Reductions (c × 0.15)	118.26
e. 2008 Target (c – d) .....	670.11

*C. The 2008 Projected Emissions Inventories and How the Total Required 15% Reductions Are Achieved*

Next, section 182(b)(1)(A) requires that states need to provide sufficient control measures in their RFP plans to offset any emissions growth. To do this the state must estimate the amount of growth that will occur between 2002 and the end of 2008. The state uses population and economic forecasts to estimate how emissions will change in the future. Generally, Texas followed our standard guidelines in estimating the growth in emissions. EPA's MOBILE 6.2.03 model was used to develop the 2008 on-road inventory. For more detail on how emissions growth was estimated, see the TSD. Texas terms the projections of growth as the RFP 2008 Uncontrolled Inventories.

Texas then estimates the projected emission reductions from the control measures in place between 2002 and the end of 2008 and applies these to the RFP 2008 Uncontrolled Inventories; the results are the RFP 2008 Controlled Inventories. The total amount of NO<sub>x</sub> emissions in the RFP 2008 Controlled Inventories must be equal to or less than the 2008 target inventories (listed at row e in Table 2 above). The RFP plan relies on a number of state and federal control measures intended to reduce NO<sub>x</sub> emissions. The control measures address emissions from point, area, mobile non-road, and mobile on-road sources.

The majority of point source NO<sub>x</sub> reductions are from the mass emissions cap and trade (MECT) program for utility boilers, turbines, duct burners, heaters and furnaces, IC engines, and industrial boilers. The HGB area did not rely upon any area source controls for NO<sub>x</sub> reductions.

Non-road emission reductions are from federal controls on non-road engines. The mobile non-road emission reductions were estimated using the NONROAD 2005 model, with customized data files to reflect emissions generated by non-road mobile equipment in Texas. Emissions from locomotives, aircraft and support equipment, and commercial marine vessels were calculated outside of the NONROAD 2005 model using EPA approved methodologies. EPA finds that Texas' projected emissions and emission reductions for these three non-road mobile sources are acceptable.

Reductions in mobile on-road emissions resulted from the post-1990 FMVCP, reformulated gasoline, Texas' inspection and maintenance program, and the Texas low emission diesel program. Each of the State measures relied upon in this plan have been approved in separate actions. See the TSD for more details.

As a result, for NO<sub>x</sub> the target level of emissions is 670.11 tpd, and the 2008 projected emissions inventory (after RFP reductions are applied) is 553.96 tpd. Since all reductions are accomplished with NO<sub>x</sub> reductions, there is no VOC reduction requirement for the area. As illustrated in Table 3, the 2008 projection inventory after RFP reductions is less than the target level of emissions. Therefore, the control measures included in the 2008 projected emissions are adequate to meet the 15% RFP requirement.

TABLE 3—SUMMARY OF RFP DEMONSTRATION FOR HGB

Inventory	NO <sub>x</sub> (tons/day)
2008 Target .....	670.11.
2008 Uncontrolled Emissions .....	1026.63.
2008 RFP Emission Reductions .....	472.67.
2008 Projected Emissions after RFP Reductions.	553.96.
RFP Met? .....	Yes.

*D. The Reasonable Further Progress Plan Includes Acceptable RFP Contingency Measures*

The 1997 8-hour ozone RFP plan for a moderate nonattainment area must include contingency measures, which are additional controls to be implemented if the area fails to make reasonable further progress. Contingency measures are intended to achieve reductions over and beyond those relied on in the RFP demonstration and could include federal and state measures already scheduled for implementation. The CAA does not preclude a state from

implementing such measures before they are triggered. EPA interprets the CAA to require sufficient contingency measures in the RFP submittal, so that upon implementation of such measures, additional emission reductions of up to 3% of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) would be achieved between the milestone year of 2008 and the next calendar year, *i.e.*, 2009.

Texas used federal and state measures currently being implemented to meet the contingency measure requirement for the HGB RFP SIP. These measures, which are the same measures used for RFP, provide reductions that are in excess of those needed for RFP. As shown in Table 4, the excess reductions are greater than 3% of the adjusted base year inventory. Therefore these reductions are sufficient as contingency measures.

TABLE 4—RFP CONTINGENCY MEASURE DEMONSTRATION FOR HGB RFP SIP

Description	NO <sub>x</sub> (tons/day)
a. Adjusted Base Year Inventory (from Table 2).	788.37.
b. 3% Needed for Contingency (a × 0.03).	23.65.
c. Excess Reductions Used for Contingency.	47.25.
d. Contingency Met? .....	Yes.

*E. The RFP Milestone 2008 MVEBs Are Approvable*

The 1997 8-hour ozone RFP plan must include MVEBs for transportation conformity purposes. The MVEB is the mechanism to determine if the future transportation plans conform to the SIP. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, delay reaching reasonable further progress milestones, or delay timely attainment of the NAAQS. A MVEB is the maximum amount of emissions allowed in the SIP for on-road motor vehicles. The MVEB establishes an emissions ceiling for the regional transportation network. The HGB RFP SIP contains VOC and NO<sub>x</sub> MVEBs for the RFP milestone year 2008. The emissions budget for VOC is 86.77 tpd, and the NO<sub>x</sub> emissions budget is 186.13 tpd. On-road emissions must be shown in future transportation plans to be less than the MVEBs for 2008 and subsequent years. The VOC and NO<sub>x</sub> RFP emissions budgets are acceptable: when added to the other components of

the 2008 emissions inventory (including non-road, stationary source, and area source emissions), the total level of emissions is below the 2008 RFP emissions target level. We found the RFP MVEBs (also termed transportation conformity budgets) adequate, and on June 28, 2007, the availability of these budgets was posted on our Web site for the purpose of soliciting public comments. The comment period closed on July 30, 2007, and we received no comments. On March 21, 2008, we published the Notice of Adequacy Determination for these RFP MVEBs (73 FR 15152). Once determined adequate, these RFP budgets must be used in future HGB transportation conformity determinations. The adequacy determination represents a preliminary finding by EPA of the acceptability of the MVEBs. Today, we are finding the MVEBs are fully consistent with RFP, and the RFP plan is fully approvable, as it sets the allowable on-road mobile emissions the HGB area can produce and continue to demonstrate RFP.

**V. 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 (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 June 22, 2009. 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.

Dated: April 10, 2009.

**Lawrence E. Starfield,**  
*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**

■ 2. The second table in § 52.2270(e) entitled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding two new entries to the end of the table for “Approval of the 1997 8-hour Ozone 15% Reasonable Further Progress Plan, and 2008 RFP Motor Vehicle Emission Budgets” and “2002 Base Year Emissions Inventory”, for the Houston-Galveston-Brazoria, TX area. The additions read as follows:

**§ 52.2270 Identification of plan.**

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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
* * * * *				
Approval of the 1997 8-hour Ozone 15% Reasonable Further Progress Plan, and 2008 RFP Motor Vehicle Emission Budgets.	Houston-Galveston-Brazoria, TX.	05/23/07	04/22/09 [Insert FR page number where document begins].	*
2002 Base Year Emissions Inventory .....	Houston-Galveston-Brazoria, TX.	05/23/07	04/22/09 [Insert FR page number where document begins].	