



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2013-0387; FRL-9904-96-Region 6]

**Approval and Promulgation of Implementation Plans; Texas; Attainment Demonstration
for the Houston-Galveston-Brazoria 1997 8-hour Ozone Nonattainment Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the following required State Implementation Plan (SIP) submittals from the State of Texas for the Houston-Galveston-Brazoria 1997 8-hour ozone nonattainment area (HGB area): the attainment demonstration for the 1997 ozone National Ambient Air Quality Standards (NAAQS), the reasonably available control measures (RACM) demonstration for the NAAQS, the contingency measures plan in the event of failure to attain the NAAQS by the applicable attainment date, and a Motor Vehicle Emissions Budget (MVEB) for 2018, which is the attainment year for the area. EPA is also approving revisions to the air pollution control measures and General Air Quality Definitions in the Texas SIP. The revisions to the air pollution control measures include revisions to the Mass Emissions Cap and Trade (MECT) program for nitrogen oxides (NO_x), revisions to the highly reactive volatile organic compound (HRVOC) emissions cap and trade (HECT) program, Voluntary Mobile Emissions Program (VMEP) measures, and Transportation Control Measures

(TCMs). EPA is taking these actions in accordance with section 110 and part D of the Clean Air Act (CAA).

DATES: This final rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2013-0387. 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 Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD-L), telephone (214) 665-6645, e-mail young.carl@epa.gov.

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

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I. Background

The background for today's action is discussed in detail in our September 9, 2013 proposal (78 FR 55037). In that notice, we proposed to approve the following Texas SIP submittals for the HGB area:

- Attainment demonstration for the 1997 ozone NAAQS
- Revisions to the MECT air pollution control program
- Revisions to the HECT air pollution control program
- VMEP measures and TCMs
- A 2018 year MVEB
- Demonstration of RACM
- Contingency measures plan addressing a failure to attain the NAAQS by the applicable attainment date
- Revisions to the General Air Quality Definitions submitted by the State on June 10, 2005, August 16, 2007, April 6, 2010 and March 11, 2011.

In our proposal we noted that in order to approve the attainment demonstration for the area we must also approve the reasonable further progress (RFP) plan and the RFP contingency

measures (78 FR 55037, 55038). In a separate action we are approving the RFP plan and the RFP contingency measures.¹

Five commenters provided comments on our September 9, 2013 proposal. The comments we received can be accessed from the *www.regulations.gov* website (Docket No. EPA-R06-OAR-2013-0387). The discussion below addresses the comments we received on our proposed action.

II. Response to Comments

Comment: We received four comments supportive of our proposal to approve the SIP revisions.

Response: We appreciate the supportive comments.

Comment: We received a comment that the relevance of the attainment demonstration must be evaluated against the 2008 ozone NAAQS of 75 ppb, not the 1997 ozone NAAQS of 84 ppb.

Response: We disagree that the relevance of the attainment demonstration must be evaluated against the 2008 ozone NAAQS. Clean Air Act section 182(b)(1) and 40 CFR 51.908 require an attainment demonstration for the 1997 ozone NAAQS. The attainment demonstration being approved specifically addresses this CAA requirement. Areas were designated for the 2008 ozone NAAQS in 2012 and the attainment demonstration and other planning provisions to address the area's nonattainment status for that standard are not yet due. We expect future SIP revisions for the HGB area, including the attainment demonstration, will be submitted to address the 2008 ozone NAAQS.

Comment: We received a comment from the Texas Commission on Environmental Quality (TCEQ) requesting that we not act on the revisions submitted for the HECT program in 30 TAC 101.396(b) and instead retain the current SIP-approved rule language. TCEQ noted that the

¹ See docket EPA-R06-OAR-2010-0333 in *www.regulations.gov*.

revision to 30 TAC 101.396(b) conflicts with 30 TAC 115.722(c) and 30 TAC 115.761(c) and that they intend to consider technical corrections to 30 TAC 101.396(b) in future rulemaking.

Response: Given the TCEQ request we are not taking action on the revision to 30 TAC 101.396(b) at this time. The current SIP-approved language for 30 TAC 101.396(b) will therefore remain in effect and remove any concerns about conflicts with existing SIP-approved requirements at 30 TAC 115.722(c) and 115.761(c) as cited by the TCEQ. Further, the retention of the SIP-approved language at 30 TAC 101.396(b) will ensure the continued integrity of the HECT program and the HGB attainment demonstration. Table 1 below shows the current SIP-approved language that will be retained and the revision we are not taking action on for 30 TAC 101.396(b).

Table 1. SIP Approved Language and Submitted Revision to 30 TAC 101.396(b)

SIP Approved 30 TAC 101.396(b) that will be retained	Revision to 30 TAC 101.396(b) that we are not taking action on
<p>The amount of HRVOC emissions from covered facilities shall be calculated for each hour of the year and summed to determine the annual emissions for compliance. For emissions from emissions events subject to the requirements of §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) or emissions from scheduled maintenance, startup, or shutdown activities subject to the requirements of §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements); the hourly emissions to be included in the summation shall not exceed the short-term limit of §115.722(c) and §115.761(c) of this title (relating to Site-wide Cap and Control Requirements; and Site-wide Cap).</p>	<p>(b) The amount of HRVOC emissions from applicable facilities will be calculated for each hour of the year and summed to determine the annual emissions for compliance. For emissions from scheduled maintenance, startup, or shutdown activities subject to the requirements of §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), the hourly emissions to be included in the summation shall not exceed the short-term limit of §115.722(c) and §115.761(c) of this title (relating to Site-wide Cap and Control Requirements; and Site-wide Cap).</p>

Comment: One commenter who supported the proposal also urged us to work proactively with states to develop guidance on how to best account for exceptional events, particularly wildfires, and transport of emissions from Asia in future SIPs. The commenter further urged us to thoughtfully consider exceptional event and CAA 179B petitions from states affected by emissions that are beyond their control.

Response: While these matters are not relevant to the current action before us which is approving the HGB area SIP, we note that we will continue to actively work with states to address the general SIP related issues of exceptional events and international transport. In May 2013, we issued interim guidance on exceptional events and announced our intention to propose and finalize revisions to the 2007 Exceptional Events Rule (72 FR 13560, March 22, 2007). More information can be found on our exceptional events website located at <http://www.epa.gov/ttn/analysis/exevents.htm>.

CAA section 179B (International Border Areas), applies to nonattainment areas that are affected by emissions from outside the United States. For more discussion on section 179B, please see 78 FR 34178, 34204 (June 6, 2013 Federal Register) and 70 FR 71612, 71624 (November 29, 2005 Federal Register).

III. Final Action

We are approving SIP submittals from the State of Texas for the HGB ozone nonattainment area submitted on April 6, 2010, and May 6, 2013. Specifically, we are approving the following Texas SIP submittals for the HGB area:

- Attainment demonstration for the 1997 ozone NAAQS
- Revisions to the MECT air pollution control program

- Revisions to the HECT air pollution control program
- VMEP measures and TCMs
- A 2018 year MVEB
- Demonstration of RACM
- Contingency measures plan addressing a failure to attain the NAAQS by the applicable attainment date

We are also approving the following SIP revisions to the General Air Quality Definitions submitted by the State on June 10, 2005, August 16, 2007, April 6, 2010 and March 11, 2011. Additionally, we are approving the revisions to the MECT and HECT program submitted on April 6, 2010, with the exception of the revision to 30 TAC 101.396(b). We are taking no action on revisions to 30 TAC 101.396(b).

We are approving these SIP revisions in accordance with section 110 and part D of the CAA.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air 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; 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. section 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 publication 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, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: December 19, 2013.

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 entries for Sections 101.1, 101.350, 101.351, 101.353, 101.390 through 101.394, 101.396, and 101.399 through 101.401.

b. In paragraph (e), the second table entitled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding a new entry to the end of the table for “Houston-Galveston-Brazoria 1997 8-hour Ozone NAAQS Attainment Demonstration SIP and its MECT and HECT air pollution control program revisions, VMEP measures and TCMs, 2018 MVEB, RACM demonstration, and Failure to attain contingency measure plan”.

The revisions and additions read as follows:

§ 52.2270 Identification of plan.

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(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/ submittal date	EPA approval date	Explanation

* * * * *				
Chapter 101 – General Air Quality Rules				
Subchapter A – General Rules				
Section 101.1	Definitions	3/11/2011	[Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins]	
* * * * *				
Subchapter H – Emissions Banking and Trading				
* * * * *				
Division 3 – Mass Emissions Cap and Trade Program				
Section 101.350	Definitions	4/6/2010	[Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins]	
Section 101.351	Applicability	4/6/2010	[Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins]	
* * * * *				

Section 101.353	Allocation of Allowances	4/6/2010	[Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins]	
* * * * *				
Division 6 – Highly-Reactive Volatile Organic Compound Emissions Cap and Trade Program				
Section 101.390	Definitions	4/6/2010	[Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins]	
Section 101.391	Applicability	4/6/2010	[Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins]	
Section 101.392	Exemptions	4/6/2010	[Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins]	

Section 101.393	General Provisions	4/6/2010	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 101.394	Allocation of Allowances	4/6/2010	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 101.396	Allowance deductions	4/6/2010	[Insert date of FR publication] [Insert FR page number where document begins]	At the request of TCEQ EPA took no action on the revision to 101.396(b) submitted on 4/6/2010. Section 101.396(b) is the rule language submitted 12/1/2004 and approved 9/6/2006 (71 FR 52659).
Section 101.399	Allowance Banking and Trading	4/6/2010	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 101.400	Reporting	4/6/2010	[Insert date of FR publication] [Insert FR page number where document begins]	

Section 101.401	Level of Activity Certification	4/6/2010	[Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins]	
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(e) * * *

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

Name of SIP provision	Applicable geographic or non-attainment area	State approval/ submittal date	EPA approval date	Comments
* * * * *				
Houston-Galveston-Brazoria 1997 8-hour Ozone NAAQS Attainment Demonstration SIP and its MECT and HECT air pollution control program revisions, VMPEP measures and TCMs, 2018 MVEB, RACM demonstration, and Failure to attain contingency measure plan	Houston-Galveston-Brazoria, TX	4/6/2010 5/6/2013	[Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins]	