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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2020-0165; FRL-10018-30-Region 6]

Air Approval Plans; Texas; Reasonably Available Control Technology in the Houston-Galveston-Brazoria Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve the May 13, 2020 revisions to the Texas State Implementation Plan (SIP) concerning Reasonably Available Control Technology (RACT) requirement for the Houston-Galveston-Brazoria (HGB), 2008 8-hour ozone National Air Quality Ambient Air Quality Standards (NAAQS) nonattainment area (NA). The HGB area, designated as serious for 2008 8-hour ozone NAAQS, consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties. The RACT requirements apply to sources of Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_x) in this area. We are also proposing to approve negative declarations for certain VOC source categories subject to RACT in the HGB area.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2020-0165, at <https://www.regulations.gov> or via email to Todd.Robert@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Robert M. Todd, (214) 665-2156, Todd.Robert@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Robert M. Todd, 214-665-2156, Todd.Robert@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via

<https://www.regulations.gov>, as there may be a delay in processing mail and courier or hand deliveries may not be accepted. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

I. Background

VOC and NO_x help produce ground-level ozone, or smog, which harms human health and the environment. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as moderate or above include implementation of RACT for any source covered by a Control Techniques Guidelines (CTG) document and also for any major source of VOC or NO_x not covered by a CTG. It is worth noting that for some CTG categories, RACT is applicable to minor or area sources. The EPA has defined RACT as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. See September 17, 1979 (44 FR 53761).

For a Moderate, Serious, or Severe area a major stationary source is one that emits, or has the potential to emit, 100, 50, or 25 tons per year (tpy) or more of VOCs or NO_x, respectively. See CAA sections 182(b), 182(c), and 182(d). The EPA provides states with guidance concerning what types of controls could constitute RACT for a given source category through the issuance of CTG and Alternative Control Techniques (ACT) documents. See <https://www.epa.gov/ground-level-ozone-pollution/control->

techniques-guidelines-and-alternative-control-techniques (URL dating November 12, 2020) for a listing of EPA-issued CTGs and ACTs.

On March 27, 2008, the EPA revised the primary and secondary Ozone (O₃) standard to a level of 75 parts per billion (ppb). On October 26, 2015, (80 FR 65292) EPA adopted another revision to the Ozone standard, but the 2008 standard remains in place. This notice concerns the VOC RACT requirements under the 2008 standard.

Promulgation of a NAAQS triggers a requirement for the EPA to designate areas as nonattainment, attainment, or unclassifiable, and to classify the NAs at the time of designation. On May 21, 2012, the EPA established initial area designations for most areas of the country with respect to the 2008 primary and secondary eight-hour O₃ NAAQS. The EPA published two rules addressing final implementation¹ and air quality designations.² The implementation rule established classifications, associated attainment deadlines, and revoked the 1997 O₃ standards for transportation conformity purposes. The designation rule finalized the NAA boundaries for areas that did not meet the 75 ppb standard. Furthermore, the finalized nonattainment areas were classified according to the severity of their O₃ air quality problems as determined by each area's design value.³ The O₃ classification categories were defined as Marginal, Moderate, Serious, Severe, or Extreme.

¹ See 77 FR 30160 "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach, Attainment Deadlines and Revocation of the 1997 Ozone Standards for Transportation Conformity Purposes."

² See 77 FR 30088, "Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards."

³ The air quality design value for the 8-hour ozone NAAQS is the three-year average of the annual fourth highest daily maximum 8-hour average ozone concentration. See 40 CFR part 50, appendix I.

Originally the HGB area was classified as “marginal” (77 FR 30088 and 77 FR 30160, May 21, 2012).⁴ However, the HGB area did not meet the revised attainment deadline of July 20, 2016 and was reclassified to moderate. Based on the moderate classification of the HGB area for the 2008 ozone standard, under section 182(b) of the CAA, a major stationary source in the area is one that emits, or has the potential to emit, 100 tpy or more of VOCs or NO_x. However, on August 23, 2019 (84 FR 44238), we found the HGB area did not meet the attainment date for the moderate classification under the 2008 O₃ NAAQS and designated the area to be a “serious” nonattainment area with an attainment date of July 20, 2021. Under the “serious” designation the major source threshold is 50 tpy or more of VOC or NO_x. In our action reclassifying HGB to serious, we set a deadline of August 3, 2021 for TCEQ to provide a demonstration that RACT was in place as necessary to meet the serious area requirements.

On May 13, 2020 Texas submitted its SIP demonstration that serious level RACT for sources of VOC and NO_x emissions in the HGB area is met for the 2008 NAAQS. Texas, in its SIP analyses⁵ to identify major stationary sources of NO_x and VOC reviewed the TCEQ 2017 point source emissions inventory, New Source Review and Clean Air Act Title V databases to locate potential sources. All sources in the Title V database that were listed as a major source for NO_x or VOC emissions are included in the RACT analysis. TCEQ noted that they reviewed sources that reported actual emissions as low as 25 tpy of NO_x or VOC to account for the difference between actual and potential

⁴ Subsequently the attainment deadlines were revised under the marginal classification. 80 FR 12264, March 6, 2015; 81 FR 26697, May 4, 2016).

⁵ See Appendix F, *Reasonably Available control Technology Analysis*, of the state’s SIP submittal, available at

https://www.tceq.texas.gov/assets/public/implementation/air/sip/hgb/hgb_serious_AD_2019/HGB_AD_SI_P_19077SIP_AppendixF_adoption.pdf. Last accessed November 16, 2020.

emissions. TCEQ also noted that sites from the emissions inventory database with emissions equal to or greater than a threshold of 25 tpy or more of NO_x or VOC definition that were not identified in the Title V database and could not be verified as minor sources by other means are also included in the RACT analysis.

II. Evaluation

Reliance on Prior RACT Determination for HGB Area

In TCEQ's May 13, 2020 submittal, Table F-1 titled "*State Rules Addressing VOC RACT Requirements in CTG Reference Documents*" lists VOC CTG source categories, their reference documents, and corresponding state rules addressing VOC RACT requirements. Table F-2 titled "*State Rules Addressing VOC RACT Requirements in ACT Reference Documents,*" in TCEQ's May 13, 2020 SIP, lists state rules addressing VOC RACT for ACT source categories. . The implementation rule of March 6, 2015 (80 FR 12264), explains that States should refer to existing CTG and ACT documents as well as all relevant technical information including recent technical information received during the public comment period to determine if RACT is being applied. States may conclude, in some cases, that sources already addressed by RACT determinations to meet the 1-hour and/or the 1997 8-hour ozone NAAQS do not need to implement additional controls to meet the 2008 ozone NAAQS RACT requirement (80 FR 12279, March 6, 2015). The EPA has approved the 30 TAC Chapter 115 VOC rules as RACT for the HGB area under the 1-hour and 1997 8-hour ozone NAAQS (71 FR, 52670, September 6, 2006; 78 FR 19599, April 2, 2013; 79 FR 21144, April 15, 2014; 79 FR 45105, August 4, 2014; and 80 FR 16291, March 27, 2015) and later the 2008 Moderate NAAQS area

designation (84 FR 18145, April 30, 2019). The EPA determined that VOC RACT is in place for all CTG and non-CTG major sources in the HGB area for the 1-hour, 1997 8-hour ozone NAAQS and 2008 moderate area NAAQS (71 FR 52676, September 6, 2006; 79 FR 21144, April 15, 2014; and 84 FR 18145, April 30, 2019), respectively. Texas's May 13, 2020 submittal relies on those EPA-approved Chapter 115 rules for the 1-hour, 1997 8-hour and 2008 8-hour ozone NAAQS to fulfill RACT requirement for CTG and non-CTG VOC major sources for the 2008 8-hour serious ozone NAAQS.⁶

We are proposing to find that the rules we approved as meeting RACT for the 1-hour and 1997 8-hour ozone NAAQS also meet RACT for the 2008 8-hour ozone NAAQS. We have determined this is appropriate because the fundamental control techniques described in the CTG and ACT documents and implemented in the Texas Rules are still applicable. This is supported by the implementing rule for the 2008 ozone NAAQS.⁷ The Chapter 115 rules provide appropriate VOC emissions reductions that are equivalent to control options cited in the CTG and ACT documents and any non-CTG major sources are appropriately controlled.

The state did not include any revisions to implement the new CTG for the Oil and Natural Gas Industry (EPA-453/B-16-001, October 2016) in the HGB area.⁸ As explained in EPA's implementing memo⁹ for this CTG, Texas was required to adopt and

⁶ See EPA-R06-OAR-2005-TX-0018, EPA-R06-OAR-2012-0100 and EPA-R06-OAR-2017-0055, available through the Regulations.gov website at: <https://www.regulations.gov/>.

⁷ See March 6, 2015 (80 FR 12279), final action and rationale and 80 FR 12280, first column, comments and responses.

⁸ At the time of the submittal to EPA Region 6, TCEQ noted the existence of the O&G CTG, stating EPA had proposed to withdraw it on March 9, 2018 (83 FR 10478).

⁹ See "Implementing Reasonably Available Control Technology Requirements for Sources Covered by the 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry" Memorandum from Anna Marie Wood, October 20, 2016. https://www.epa.gov/sites/production/files/2016-10/documents/implementing_reasonably_available_control_technology_requirements_for_sources_covered_by_the_2016_control_techniques_guidelines_for_the_oil_and_natural_gas_industry.pdf

submit revisions to the SIP by no later than two years after the availability of the said CTG. In this case, the date of the notice of availability was October 27, 2016 (See 81 FR 74798). EPA issued a notice of failure to submit on November 16, 2020 (85 FR 72963)¹⁰ establishing a 24-month deadline for EPA to either approve SIPs or finalize Federal Implementation Plans (FIPs) that address the Oil and Natural Gas Industry CTG in the HGB area. See section 110(c) of the Act. The EPA is committed to working with Texas to expedite the development and submission of the required SIP revisions addressing the Oil and Natural Gas Industry CTG for the affected areas, and to review and act on their submissions in accordance with the requirements of the CAA.

VOC RACT Analysis for Additional Controls or Newly Identified Sources

The vast majority of major sources of VOC are in categories covered by CTGs but as explained previously, states must ensure that all major sources have implemented RACT even those not covered by CTG's. During the last RACT review for the 2008 ozone NAAQS conducted in response to the area's moderate area classification and based on the moderate area 100 tpy major source threshold, the TCEQ identified a Vegetable Oil Manufacturing Operations source emitting VOCs in a quantity greater than the major source definition and not covered by CTG category or previously approved RACT rule. TCEQ's analysis showed that the source met a level of control consistent with RACT, i.e. the lowest achievable emission rate considering technical and economic feasibility. TCEQ did not identify any other major sources of VOC not covered by a rule previously approved as implementing RACT or achieving a level of control consistent with RACT

¹⁰ See Docket ID No. EPA-HQ-OAR-2020-0485 available at www.regulations.gov.

considering technical and economic feasibility. Please see the Technical Support Document (TSD) prepared in conjunction with this action for additional information.

VOC RACT Negative Declarations

States are not required to adopt RACT limits for CTG source categories for which no sources exist in a nonattainment area and can submit a negative declaration to that effect. The negative declaration would need to assert that there are no CTG sources in the area, and the accompanying analysis would need to support that conclusion. Texas has reviewed its emission inventory and determined that its previous negative declarations for fiberglass boat manufacturing materials, surface coating for flat wood paneling, letterpress printing, automobile and light-duty truck assembly coating, and rubber tire manufacturing categories submitted as part of its HGB Area VOC RACT SIP for the 1997 8-hour ozone NAAQS are still applicable (79 FR 21144, April 15, 2014). We also are unaware of any sources in these CTG source categories in the area and therefore we propose to approve these negative declarations.

See Table F-2 titled “*State Rules Addressing VOC RACT Requirements in ACT Reference Documents*” for a listing of source types for which a VOC Alternate Control Technology document has been issued, the state’s determination of how the technologies in the ACT have been addressed and whether or not such a source is currently located in the HGB NA area. We also are not aware of any major sources in the ACT source categories which TCEQ indicates that no sources are located in the HGB area.

HGB Area NO_x RACT TCEQ Analysis

Under CAA section 182(f) RACT is required for major sources of NO_x. The EPA has issued ACT documents¹¹ that describe available control technologies for NO_x emissions, but do not define presumptive RACT levels. In TCEQ's May 13, 2020 submittal, Table F-3: *State Rules Addressing NO_x RACT Requirements in ACT Reference Documents* provides the emission source categories, the ACT reference documents, and the state Chapter 117 rules addressing the RACT requirements for sources in the NO_x ACT documents. TCEQ also identified a glass manufacturing furnace with major NO_x emissions for which the state has not written a Chapter 117 rule controlling NO_x emissions.

In 2013, EPA determined that NO_x control measures in 30 TAC Chapter 117 met 1997 8-hour RACT requirements for major sources of NO_x in the HGB area under the 1-hour and 1997 8-hour ozone NAAQS (78 FR 19599, April 2, 2013). Our approval, under these previous standards, found that RACT was being implemented at all major sources under the severe area major source threshold of 25 tpy of NO_x. We reaffirmed that determination at 84 FR 18145, April 30, 2019 in response to the area's moderate classification under the 2008 standard. Texas's submittal relies on those EPA-approved Chapter 117 rules to fulfill RACT requirements for all but one NO_x source category that exist in the HGB area. As noted, there was a major source glass manufacturer identified as part of the analysis approved in April 2019. At that time, we approved the controls in place at the facility as RACT with controls consistent with the ACT for this source type. (See section 3.2.2 of Appendix F of the TCEQ May 13, 2020 submittal for details.)

¹¹ See <https://www.epa.gov/ground-level-ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques>

In our implementation rule for the 2008 ozone NAAQS, we made clear we believed that, in some cases, new RACT determinations would “result in the same or similar control technology as the RACT determinations made for the 1-hour or 1997 standards.” This is because the fundamental control techniques, as described in the CTG and ACT documents, are still applicable. Following this line of reasoning, Texas determined the existing Chapter 117 NO_x reduction regulations provide appropriate NO_x emissions reductions that meet RACT emission reduction requirements and adequately incorporate ACT document controls where appropriate. We are proposing to find that the existing Chapter 117 rules meet the RACT requirement in the HGB area for the 2008 8-hour ozone NAAQS.

As stated above, Texas noted their review of NO_x sources in the HGB area identified only one major source that was not covered by a rule previously approved as RACT which was a facility falling under the Glass Manufacturing ACT category.¹² The source has existing controls consistent with RACT. Texas did not locate any major sources subject to the NO_x Emission from Cement Manufacturing ACT. For all the other NO_x ACT sources, the state has established Chapter 117 regulations we have previously approved as RACT for the 1997 8-hour ozone NAAQS, reaffirmed as RACT in a review conducted for the 2008 ozone moderate NA designation, and, as discussed above, we are proposing to find them as meeting RACT for the 2008 ozone serious NA designation.

CAA 110(l) Analysis

¹² See EPA Docket ID NOs EPA-R06-OAR-2012-0100 and EPA-R06-OAR-2017-0055, available at: <https://www.regulations.gov/>.

CAA section 110(l) requires that a SIP revision submitted to EPA be adopted after reasonable notice and public hearing. Section 110(l) also requires that we not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

As a part of its submittal the TCEQ provided copies of the Public Notice of proposed serious attainment demonstration plans in the Texas Register and local newspapers. The TCEQ also held a public hearing on the revisions to the SIP on October 14, 2019 in Houston, Texas.

There are no rule changes in control requirements in this RACT submittal. The evaluation of the submittal reveals that previously EPA-approved RACT levels of control for the HGB area continue to be in effect, and there is no relaxation of those control measures for the affected sources in the proposed RACT in the HGB area. Therefore, we do not expect the existing NO_x and VOC RACT controls measures to interfere with attainment and reasonable further progress of ozone pollution control requirements, or any other applicable requirement of the Act. Furthermore, records demonstrate that Texas adopted an attainment demonstration plan that includes this RACT analyses after reasonable notice, a public hearing, and an opportunity for public comment. Thus, the CAA Section 110(l) requirements are met. We propose that RACT is in place for affected sources of NO_x and VOC emissions and that the existing controls requirements continue to represent RACT for the HGB area with the exception of those sources subject to the Oil and Gas CTG.

III. Proposed Action

We are proposing to approve the May 13, 2020 revisions to the Texas SIP concerning the HGB 2008 8-hour ozone NAAQS nonattainment area as meeting the VOC and NO_x RACT requirements for an area designated as serious with the exception of the requirement to implement RACT for sources covered by the Oil and Gas CTG. The proposed approval is, in part, based on previous VOC and NO_x RACT determinations made for this area under the 1-hour and the 1997 8-hour ozone NAAQS. We are also proposing to approve negative declarations made for fiberglass boat manufacturing materials, manufacturing of pneumatic rubber tires, flat wood paneling coatings, letterpress printing; and automobile and light-duty truck assembly coatings sectors in the HGB area under the 2008 8-hour ozone NAAQS designated as serious.

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 Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will

not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 5, 2021.

David Gray,

Acting Regional Administrator, Region 6.

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