



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2021-0525; FRL-10583-02-R6]

Air Plan Approval; Texas; Oil and Natural Gas Reasonably Available Control Technology in the Dallas-Fort Worth and Houston-Galveston-Brazoria Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving the July 20, 2021, revisions to the Texas State Implementation Plan (SIP) concerning Reasonably Available Control Technology (RACT) requirements for sources covered by the 2016 Oil and Natural Gas Control Techniques Guidelines (CTG or CTGs) for the Dallas-Fort Worth (DFW) and the Houston-Galveston-Brazoria (HGB) nonattainment areas (NAAs) for the 2008 8-hour ozone National Air Quality Ambient Air Quality Standards (NAAQS).

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA-R06-OAR-2021-0525. 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. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Anupa Ahuja, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-2701, ahuja.anupa@epa.gov. Please 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

The background for this action is discussed in detail in our February 17, 2023 proposal (88 FR 10253). In that document, we proposed to approve Texas’ July 20, 2021 SIP submittal, which includes revisions to the Texas SIP concerning the DFW and HGB 2008 8-hour ozone NAAQS NAAs, as meeting the RACT requirements for sources covered by the Oil and Gas CTG.¹ The DFW area consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties. The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties. These areas were both reclassified as Serious nonattainment for the 2008 ozone NAAQS on August 23, 2019. The revisions are to Title 30 of the Texas Administrative Code (TAC) Chapter 115. The revisions create new RACT rules for oil and gas production and natural gas processing in the DFW and HGB NAAs in Subchapter B in a new Division 7. EPA is also approving additional revisions to 30 TAC Chapter 115 which are non-substantive changes to Subchapters B, Divisions 1 and 2 and Subchapter D, Division 3 to reflect the change in the Chapter 115 rule applicability for the types of equipment currently required to comply with existing rule requirements but that would be subject to the Subchapter B, new Division 7 rule requirements upon the compliance date. The proposed approval was based on our review of 30 TAC Chapter 115 Subchapter B, Division 7 rules for consistency with EPA’s definition of RACT. The details of EPA’s review can be found in the technical support document (TSD) associated

¹ https://www3.epa.gov/airquality/ctg_act/2016-ctg-oil-and-gas.pdf

with the proposal.² We also proposed approving the new codification of changes to consolidate the rule requirements into a new section based on our determination that these changes were non-substantive and do not alter any existing rule requirement.

We received comments on our proposal from several commenters. Our response to comments follows.

II. Response to Comments

Comment: One commenter stated that the oil and natural gas industries should be made to drastically reduce volatile organic compound (VOC) emissions for the safety of human health and the environment, especially in nonattainment areas. They encouraged the EPA to continue to push for the elimination of VOCs and suggested the implementation of taxes or penalties, and replacing natural gas and oil with eco-friendly technologies.

Response: We generally agree that the effects of excessive VOC emissions on human health and the environment are negative. The EPA uses both “traditional” regulatory approaches and economic incentive approaches in implementing its mandates under the CAA. The 2016 oil and natural gas CTG at issue in this action is one of the tools under the CAA to reduce VOC emissions from certain sources. The approval of the revisions to 30 Texas Administrative Code (TAC) Chapter 115 in this action will reduce VOC emissions from oil and gas sources in the DFW and the HGB 2008 ozone nonattainment areas. This will in turn help to reduce the adverse impacts of these pollutants on public health and welfare. With respect to implementing penalty fees, the state of Texas and EPA both have the authority to bring enforcement actions against sources for violations of federally approved SIPs, including 30 TAC Chapter 115 rules. However, the other issues raised by the commenter (elimination of VOCs, taxing, and eco-friendly technologies to replace natural gas and oil) are outside the scope of this action. This action is limited to the approval of the revisions to the 30 TAC Chapter 115, Subchapter

² <https://www.regulations.gov/document/EPA-R06-OAR-2021-0525-0002>

B, Divisions 1, 2, 3, and 7 to address a VOC RACT requirement related to emissions from oil and gas sources in the DFW and HGB nonattainment areas.

Comment: Two commenters stated that further regulatory standards should be implemented to control sources of VOCs and nitrogen oxides (NO_x), precursors of ground level ozone. They further stated that revised and updated SIPs should be approved to reduce emissions and to further the ability to enforce compliance with emissions limits. One commenter agrees that this action will not only improve the monitoring of these harmful pollutants but will also strengthen the regulatory enforcement and compliance of emissions limits as well as ensure efficiency of industry equipment.

Response: These comments appear to support approval of the revisions to 30 TAC Chapter 115 that will reduce emissions of VOCs from oil and natural gas sources in the DFW and HGB nonattainment areas. As stated in our proposal, ground-level ozone, or smog, is formed when VOCs and NO_x emissions interact in the presence of sunlight. Automobiles, power plants, and refineries are some of the major sources of these ozone precursors.

Ozone is one of the six criteria pollutants identified in the CAA. Accordingly, the CAA requires the EPA to periodically review and update the NAAQS to ensure that it provides adequate health and environmental protection. When the EPA establishes or revises a NAAQS, it is required to designate areas of the country as meeting or not meeting the standard. For areas that do not meet the standard, the Act provides emissions control requirements based on the extent of the ozone problem in the area. Section 182 of the CAA provides the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification. RACT for CTG-covered sources is one of the tools required by the CAA to reduce the emission of ozone precursors thereby reducing the formation of ground-level ozone.

Under the CAA, states have the primary responsibility to ensure the air quality within their geographic area is in compliance with the NAAQS. Each state must therefore develop and adopt their SIP as state law. The SIP is then submitted to the EPA for review. If the EPA approves the SIP, those control measures become federally enforceable. Therefore, the state of Texas and the EPA both have authority to bring enforcement actions for violations of the federally approved 30 TAC Chapter 115 rules.

Comment: One commenter stated that SIPs should gain the power to penalize states that do not follow this act and that EPA should make more regulations to keep the planet clean and healthy.

Response: We understand the commenter's concern to be that SIPs should be enforceable, and that EPA should penalize states for not following the Clean Air Act. First, the state of Texas and the EPA both have authority to bring enforcement actions against sources for violations of federally approved SIPs. Members of the public can also file citizen suits under the CAA to address violations of SIPs. Second, the CAA includes certain negative consequences should a state fail to submit all or a portion of a SIP as required by the CAA, or where the EPA disapproves a SIP as not meeting the CAA requirements. In those situations, the EPA is required to develop a federal implementation plan (FIP) for the state unless the state addresses the deficiency appropriately. See CAA Section 110(c). Sanctions may also be imposed on the state in those situations. See CAA Section 179. For more details on Air Quality Implementation Plans please visit <https://www.epa.gov/air-quality-implementation-plans>.

III. Final Action

We are approving the revisions to the 30 TAC Chapter 115, Subchapter B, Divisions 1 ,2, 3, and 7 as meeting RACT to address VOC emissions from oil and gas sources in the DFW and HGB nonattainment areas submitted to the EPA on July 20,

2021, for inclusion into the Texas SIP. This action is being taken under Section 110 of the Act.

In this action, the EPA is approving the following revisions to the Texas SIP adopted on June 20, 2021, and submitted to the EPA on December 17, 2021:

- Revisions to 30 TAC Chapter 115, Sections 115.111, 115.112, 115.119, and 115.121,
- Adoption of Division 7: Oil and Natural Gas in Ozone Nonattainment
- Areas and 30 TAC Sections 115.170 through 115.181 and 115.183, and Revisions to 30 TAC Section 115.357.

IV. Environmental Justice Considerations

EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within the DFW and HGB 2008 ozone NAAs. EPA then compared the data to the national average, for each of the demographic groups. The results of this analysis are included in the docket for this action and are provided for informational and transparency purposes. The results of the demographic analysis indicate that communities in close proximity to industrial sources may be subject to disproportionate environmental impacts of air pollution.

This final action approves revisions to the Texas SIP to reduce VOC emissions from oil and natural gas sources in the DFW and HGB 2008 ozone NAAs. We expect that this action and resulting emissions reductions will generally be neutral or contribute to reduced environmental and health impacts on all populations in the DFW and HGB 2008 ozone NAAs, including people of color and low-income populations. At a minimum, this action would not worsen any existing air quality and is expected to ensure the area is meeting requirements to attain and/or maintain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

V. Incorporation by Reference

In this action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Texas' revisions to 30 TAC Chapter 115, Subchapter B, Divisions 1, 2, 3, and 7 as meeting RACT to address VOC emissions from oil and gas sources in the DFW and HGB nonattainment areas as described in the Final Action section above. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

VI. 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, the 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 Orders 12866 (58 FR 51735, October 4, 1993), and 14094 (88 FR 21879, April 11, 2023);

- 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, 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- 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.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those

resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate environmental justice considerations as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. EPA performed an environmental justice analysis, as is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based that is inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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 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).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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 DATE OF 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 31, 2023.

Earthea Nance,
Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 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 (c), the table titled “EPA Approved Regulations in the Texas SIP”, under the heading “Chapter 115 (Reg 5) – Control of Air Pollution from Volatile Organic Compounds”, is amended by:

(a) Under the subheading “Subchapter B: General Volatile Organic Compound Sources”,

(i) Revising the entries for sections 115.111, 115.112, 115.119, and 115.121 ; and

(ii) Adding “Division 7: Oil and Natural Gas in Ozone Nonattainment Areas”

consisting of sections 115.170 through 115.181 and 115.183, immediately following the entry for section 115.169; and

(b) Under the subheadings “Subchapter D—Petroleum Refining, Natural Gas Processing, and Petrochemical Processes” and “Division 3: Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas”, revising the entry for section 115.357.

The revisions and addition 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
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Chapter 115 (Reg 5) – Control of Air Pollution from Volatile Organic Compounds				
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Subchapter B: General Volatile Organic Compound Sources				
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Section 115.111	Exemptions	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 115.112	Control Requirements	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
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Section 115.119	Compliance Schedules	7/20/21		
* * * * *				
Section 115.121	Emissions Specifications	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
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Division 7: Oil and Natural Gas in Ozone Nonattainment Areas				
Section 115.170	Applicability	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	

Section 115.171	Definitions	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 115.172	Exemptions	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 115.173	Compressor Control Requirements	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 115.174	Pneumatic Controller and Pump Control Requirements	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 115.175	Storage Tank Control Requirements	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 115.176	Alternative Control Requirements	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 115.177	Fugitive Emission Component Monitoring Requirements	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	

Section 115.178	Monitoring and Inspection Requirements	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 115.179	Approved Test Methods and Testing Requirements	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 115.180	Recordkeeping Requirements	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 115.181	Reporting Requirements	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 115.183	Compliance Schedules	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
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Subchapter D—Petroleum Refining, Natural Gas Processing, and Petrochemical Processes				
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Division 3: Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas				
Section 115.357	Exemptions	7/20/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	

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[FR Doc. 2023-16640 Filed: 8/14/2023 8:45 am; Publication Date: 8/15/2023]