

claim(s) the claimant wants to appeal, then the AOJ will contact the claimant to request clarification of the claimant's intent. This contact may be either oral or written.

(1) For oral contacts, VA will contact whoever filed the communication. VA will make a written record of any oral clarification request conveyed to the claimant including the date of the adverse decision involved and the response. In any request for clarification, the AOJ will explain that if a response to this request is not received within the time period described in paragraph (c) of this section, the earlier, unclear communication will not be considered an NOD as to any adverse decision for which clarification was requested.

(2) For written contacts, VA will mail a letter requesting clarification to the claimant and send a copy to his or her representative and fiduciary, if any.

(c) *Response required from claimant*—(1) *Time to respond*. The claimant must respond to the AOJ's request for clarification within the later of the following dates:

(i) 60 days after the date of the AOJ's clarification request; or

(ii) One year after the date of mailing of notice of the adverse decision being appealed (60 days for simultaneously contested claims).

(2) *Failure to respond*. If the claimant fails to provide a timely response, the previous communication from the claimant will not be considered an NOD as to any claim for which clarification was requested. The AOJ will not consider the claimant to have appealed the decision(s) on any claim(s) as to which clarification was requested and not received.

(d) *Action following clarification*. When clarification of the claimant's intent to file an NOD is obtained, the AOJ will reexamine the claim and determine whether additional review or development is warranted. If no further review or development is required, or after necessary review or development is completed, the AOJ will prepare a Statement of the Case pursuant to § 19.29 unless the disagreement is resolved by a grant of the benefit(s) sought on appeal or the NOD is withdrawn by the claimant.

(e) *Representatives and fiduciaries*. For the purpose of the requirements in paragraphs (b) through (d) of this section, references to the "claimant" include reference to the claimant or his or her representative, if any, or to his or her fiduciary, if any, as appropriate.

(Authority: 38 U.S.C. 501, 7105, 7105A) (The Office of Management and Budget has approved the information collection

requirements in this section under control number 2900-0674)

3. Section 19.27 is revised to read as follows:

**§ 19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.**

If, after following the procedures set forth in 38 CFR 19.26, there remains within the agency of original jurisdiction a conflict of opinion or a question pertaining to a claim regarding whether a written communication expresses an intent to appeal or as to which denied claims a claimant wants to appeal, the procedures for an administrative appeal, as set forth in 38 CFR 19.50-19.53, must be followed.

(Authority: 38 U.S.C. 501, 7105, 7106)

[FR Doc. E6-15894 Filed 9-27-06; 8:45 am]

BILLING CODE 8320-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R06-OAR-2005-TX-0015; FRL-8224-7]

**Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Control Volatile Organic Compound Emissions; Volatile Organic Compound Control for El Paso, Gregg, Nueces, and Victoria Counties and the Ozone Standard Nonattainment Areas of Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve Texas State Implementation Plan (SIP) revisions. The revisions pertain to regulations to control Volatile Organic Compound (VOC) emissions from facilities in El Paso, Gregg, Nueces, and Victoria Counties; the 8-hour ozone standard nonattainment areas of Beaumont/Port Arthur and Houston/Galveston; and portions of the Dallas/Fort Worth 8-hour ozone standard nonattainment area. The revisions add additional controls on VOC emissions from industrial wastewater systems in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas. The revisions also amend requirements to identify and correct emissions from VOC leaks from facilities that refine petroleum or process natural gas, gasoline or petrochemicals in the

Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, and from petroleum refineries in Gregg, Nueces, and Victoria Counties. We are approving the revisions pursuant to section 110 and part D of the Federal Clean Air Act (CAA). The control of VOC emissions will help to attain and maintain the 8-hour national ambient air quality standard (NAAQS) for ozone in Texas. This approval will make the revised regulations Federally enforceable.

**DATES:** This rule is effective on November 27, 2006 without further notice, unless EPA receives relevant adverse comment by October 30, 2006. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2005-TX-0015, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- EPA Region 6 "Contact Us" Web site: <http://epa.gov/region6/r6comment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

- E-mail: Mr. Thomas Diggs at [diggs.thomas@epa.gov](mailto:diggs.thomas@epa.gov). Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.

- Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- Hand or Courier Delivery: Mr. Thomas Diggs, 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 except for legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2005-TX-0015. 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 at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Carl Young, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-6645; fax number 214-665-7263; e-mail address [young.carl@epa.gov](mailto:young.carl@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

**Outline**

- I. What Is a SIP?
- II. What Rules Were Submitted by Texas To Be Approved Into the SIP?
  - A. Texas Revisions to VOC Control Regulations
  - B. Revisions to VOC Rules for Industrial Wastewater Systems in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston Areas
  - C. Revisions to VOC Rules for Facilities that Refine Petroleum or Process Natural Gas, Gasoline or Petrochemicals in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston Areas
  - D. Revisions to VOC Rules for Petroleum Refineries in Gregg, Nueces, and Victoria Counties
- III. What Action Is EPA Taking?
- IV. What Is the Effect of This Action?
- V. Final Action
- VI. Statutory and Executive Order Reviews

**I. What Is a SIP?**

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

Each State which contains areas that are not attaining the NAAQS must submit regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

**II. What Rules Were Submitted by Texas To Be Approved Into the SIP?**

**A. Texas Revisions to VOC Control Regulations**

Texas submitted rules for inclusion into the SIP for ozone which added and

amended requirements to control VOC emissions. VOCs are a key component in the formation of ozone. The revised rules also made a variety of changes which make the rules easier to read. The revisions amended Title 30 of the Texas Administrative Code, Chapter 115, Control of Air Pollution from Volatile Organic Compounds (30 TAC 115). See our Technical Support Document (TSD) for more information.

The State rules (1) Add new requirements to control VOC emissions from industrial wastewater systems in El Paso County, the Beaumont/Port Arthur and Houston/Galveston 8-hour ozone standard nonattainment areas, and the Dallas/Fort Worth area Counties of Collin, Dallas, Denton, and Tarrant, and (2) amend requirements to identify and correct emissions from VOC leaks from facilities that refine petroleum or process natural gas, gasoline or petrochemicals in these areas and from petroleum refineries in Gregg, Nueces, and Victoria Counties. The Beaumont/Port Arthur 8-hour ozone standard nonattainment area includes Hardin, Jefferson, and Orange Counties. The Houston/Galveston 8-hour ozone standard nonattainment area includes Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties. Collin, Dallas, Denton, and Tarrant Counties are part of the Dallas/Fort Worth 8-hour ozone standard nonattainment area. These counties, as well as El Paso County, were designated as nonattainment for the 1-hour ozone standard. On April 30, 2004 we published Phase 1 of a final rule to implement the 8-hour ozone standard and revoke the 1-hour ozone standard (69 FR 23951). We also promulgated designations and boundaries for areas of the country with respect to the 8-hour ozone standard (69 FR 23858). El Paso County was designated as attainment for the 8-hour standard. The Dallas/Fort Worth area Counties of Collin, Dallas, Denton, and Tarrant as well as Ellis, Johnson, Kaufman, Parker and Rockwall were designated as nonattainment for the 8-hour standard.

**B. Revisions to VOC Rules for Industrial Wastewater Systems in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston Areas**

The revisions added requirements for industrial wastewater systems in El Paso County, the Beaumont/Port Arthur and Houston/Galveston 8-hour ozone nonattainment areas, and Collin, Dallas, Denton, and Tarrant Counties in the Dallas/Fort Worth 8-hour ozone nonattainment area. With certain exceptions, these systems may not use

VOCs as the sealing liquid in water seals for industrial wastewater systems (30 TAC 115.142). Use of VOCs in a water seal will result in unnecessary VOC emissions. Ethylene glycol, propylene glycol, or other low vapor pressure antifreeze may be used during the period of November through February for freeze protection. A gasketed seal, or a tightly-fitting cap or plug, is required on process drains that are not equipped with water seals. If not properly sealed, process drains can have uncontrolled VOC emissions. Operators of these systems must follow a specific repair schedule for components found to be leaking, and verify that adequate leak repairs have been made (30 TAC 115.142). A component is a piece of equipment, including, but not limited to, pumps, valves, compressors, connectors, and pressure relief valves, which has the potential to leak volatile organic compounds (30 TAC 115.10(6)). Operators must also (1) inspect water seals weekly to ensure that the water seal controls are properly designed and restrict ventilation, (2) daily inspect water seals that have failed three or more inspections in any 12 month period, and (3) inspect process drains not equipped with water seal controls weekly, to ensure that all gaskets, caps and plugs are adequate to control VOC emissions (30 TAC 115.144).

*C. Revisions to VOC Rules for Facilities that Refine Petroleum or Process Natural Gas, Gasoline or Petrochemicals in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston Areas*

The revisions amended requirements for facilities that refine petroleum or process natural gas, gasoline or petrochemicals in El Paso County, the Beaumont/Port Arthur and Houston/Galveston 8-hour ozone nonattainment areas, and Collin, Dallas, Denton, and Tarrant Counties in the Dallas/Fort Worth 8-hour ozone nonattainment area. Requirements were also added for delaying repair of a VOC component leak (30 TAC 115.352). If the repair of a component within 15 days after the leak is detected would require a process unit shutdown that would create more emissions than the repair would eliminate, the repair may be delayed until the next scheduled process unit shutdown. Additional requirements specify that (1) Delay of repair beyond a process unit shutdown will be allowed for a component if that component is isolated from the process and does not remain in VOC service; (2) valves that can be safely repaired without a process unit shutdown may not be placed on the shutdown list; and (3) delay of repair

will be allowed for pumps, compressors, or agitators if the repair is completed as soon as practicable, but not later than six months after the leak was detected, and the repair requires replacing the existing seal design with: (a) A dual mechanical seal system that includes a barrier fluid system, (b) a system that is designed with no externally actuated shaft penetrating the housing; or (c) a closed-vent system and control device that meets the Texas requirements to control vent gas streams with a control efficiency of at least 98% or to a VOC concentration of no more than 20 parts per million by volume (30 TAC 122(a)(2)). Flexibility to VOC control requirements was provided by allowing use of leak-tight devices similar to rupture disks on pressure relief valves (30 TAC 115.352(9)).

Revisions to monitoring and inspection requirements (30 TAC 115.354) state that: (1) All component monitoring must occur when the component is in contact with process material and the process unit is in service; (2) monitored screening concentrations must be recorded for each component in gaseous or light liquid service; and (3) all new connectors must be checked for leaks within 30 days of being placed in volatile organic compound service by monitoring with a hydrocarbon gas analyzer for components in light liquid and gas service and by using visual, audio, and/or olfactory means for components in heavy liquid service, except that components that are unsafe to monitor or inspect are exempt from this requirement if they are monitored or inspected as soon as possible during times that are safe to monitor. The revisions also specify that only process drains receiving or contacting affected VOC wastewater streams are required to conduct the yearly hydrocarbon gas analyzer monitoring. Flanges are excluded from weekly sight, sound or smell inspection provided they are monitored at least annually using EPA method 21 (40 CFR 60), or unsafe to inspect. Revisions to record keeping requirements state that the facilities must keep records: (1) Of the date on which a first attempt at repair was made to a component that is leaking VOCs; (2) identifying each process unit, including the name of each process unit, a scale plot plan showing the location of each process unit, process flow diagrams for each process unit showing the general process streams and major equipment on which the components are located, and the expected VOC emissions if the process unit is shut down for repair of components or other equipment; (3) on

all data for each component required to be monitored with a hydrocarbon gas analyzer; and (4) to justify exempting components from monitoring requirements. These records will improve enforceability by enabling inspectors to more readily determine compliance with VOC control requirements.

Additional exemptions were added to the requirements for controlling VOCs (115.357). Exemptions were added to the requirement for a second valve, blind flange, or tightly fitting plug or cap on a pipe or line containing VOC for: (1) Open-ended valves or lines in an emergency shutdown system which are designed to open automatically in the event of an emissions event; (2) open-ended valves or lines containing materials which would autocatalytically polymerize or would present an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system; (3) instrumentation systems that meet 40 CFR 63.169; (4) sampling connection systems that meet Federal air pollution regulations for such systems found at 40 CFR 63.166 (a) and (b); (5) components that are insulated, making them inaccessible to monitoring with a hydrocarbon gas analyzer; and (6) components or systems that have a VOC vapor pressure equal to or less than 0.002 pounds per square inch at 68 degrees Fahrenheit.

*D. Revisions to VOC Rules for Petroleum Refineries in Gregg, Nueces, and Victoria Counties*

The revisions amended requirements for petroleum refineries in Gregg, Nueces, and Victoria Counties. These refineries may choose to monitor all components in liquid service on a quarterly basis in lieu of marking all pipeline valves and pressure relief valves in gaseous VOC service (30 TAC 115.322). This option should result in more frequent monitoring of components in liquid service, but will add flexibility for owners or operators to be able to choose which option will be most efficient and effective for their refinery. The refineries also have additional record keeping requirements for their VOC leak monitoring program (30 TAC 115.326). These records include: (1) The date a component was monitored, (2) the results of the monitoring, (3) the test method used, (4) the date a first attempt at repair was made to a leaking component, and (5) the date a leaking component is placed on the shutdown list.

### III. What Action Is EPA Taking?

EPA is taking direct final action to approve revisions to the Texas SIP that pertain to regulations which control VOC emissions in Texas. The revisions were adopted by the State of Texas and submitted to EPA on (1) September 7, 2001, (2) July 18, 2002, (3) January 28, 2003, (4) November 7, 2003, and (5) December 17, 2004.

The revisions submitted to EPA that are being approved amend §§ 115.113, 115.116, 115.117, 115.120–115.123, 115.126, 115.127, 115.129, 115.132, 115.133, 115.136, 115.137, 115.139, 115.140, 115.142–115.145, 115.147, 115.149, 115.153, 115.159, 115.160, 115.161, 115.166, 115.167, 115.169, 115.311–115.313, 115.316, 115.319, 115.322, 115.323, 115.325–115.327, 115.329, 115.352–115.357, 115.359, 115.532, 115.533, 115.535, 115.539, 115.541–115.543, 115.545–115.547, 115.549, 115.552, 115.559, 115.910–115.916, 115.920, 115.923, 115.930, 115.932, 115.934, and 115.940 in 30 TAC 115. The revisions (1) Add additional controls on VOC emissions from industrial wastewater systems in El Paso County, the Beaumont/Port Arthur and Houston/Galveston 8-hour ozone standard nonattainment areas, and the Dallas/Fort Worth area Counties of Collin, Dallas, Denton, and Tarrant, and (2) amend requirements to identify and correct emissions from VOC leaks from facilities that refine petroleum or process natural gas, gasoline or petrochemicals in El Paso County, the Beaumont/Port Arthur and Houston/Galveston 8-hour ozone standard nonattainment areas, and the Dallas/Fort Worth area Counties of Collin, Dallas, Denton, and Tarrant, and from petroleum refineries in Gregg, Nueces, and Victoria Counties.

We are approving the revisions pursuant to section 110 and part D of the CAA. Many of these revisions are nonsubstantive changes which clarify rules that are already contained in the Texas ozone SIP. The other revisions strengthen the Texas ozone SIP as they (1) Reduce VOC emissions by adding additional controls, and (2) improve requirements to identify and correct emissions from VOC leaks from facilities. The control of VOC emissions will help to attain and maintain the 8-hour national ambient air quality standard (NAAQS) for ozone in Texas. As such, EPA's approval of the State's revisions will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA in compliance with the requirements of section 110(I) of the CAA. Under section 110(I) EPA

may not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA. This approval will make the revised regulations federally enforceable. Other revisions of the Texas VOC regulations submitted to EPA will be addressed in another **Federal Register** action. See our TSD for more information.

We are also making ministerial corrections to the table in 40 CFR 52.2270(c) to reflect SIP submittal dates, **Federal Register** citations of EPA action and EPA approved State regulations. The ministerial corrections apply to table entries for Sections 115.125, 115.146, 115.148, 115.162, 115.163, 115.164, and 115.165. Table entries for Section 115.332 to 115.339, and Section 115.342 to 115.349 are being removed to reflect EPA approval of the repeal of these State regulations on January 26, 1999 (64 FR 3841).

### IV. What Is the Effect of This Action?

This action approves revisions to the Texas SIP that pertain to regulations to control VOC emissions. The control of VOC emissions will help to attain and maintain the 8-hour NAAQS for ozone in Texas. This approval will make these revised regulations Federally enforceable. Enforcement of the regulations in a State SIP before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulations are Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse as described in section 304 and 307 of the CAA.

### V. Final Action

EPA is approving revisions to the Texas SIP pertaining to control of VOC emissions. The revisions were submitted to EPA by the State of Texas on (1) September 7, 2001, (2) July 18, 2002, (3) January 28, 2003, (4) November 7, 2003, and (5) December 17, 2004. The revisions being approved are §§ 115.113, 115.116, 115.117, 115.120–115.123, 115.126, 115.127, 115.129, 115.132, 115.133, 115.136, 115.137, 115.139, 115.140, 115.142–115.145, 115.147, 115.149, 115.153, 115.159, 115.160, 115.161, 115.166, 115.167, 115.169, 115.311–115.313, 115.316, 115.319, 115.322, 115.323, 115.325–115.327, 115.329, 115.352–115.357, 115.359, 115.532, 115.533, 115.535, 115.539, 115.541–115.543, 115.545–115.547, 115.549, 115.552, 115.559, 115.910–115.916, 115.920, 115.923, 115.930, 115.932, 115.934, and 115.940 in 30 TAC Chapter 115, Control of Air

Pollution from Volatile Organic Compounds.

We have evaluated the State's submittal and have determined that it meets the applicable requirements of the CAA and EPA air quality regulations. Therefore, we are approving revisions to the Texas SIP of regulations to control VOC emissions. The control of VOC emissions will help to attain and maintain the 8-hour national ambient air quality standard for ozone in Texas.

We are also making ministerial corrections to the table in 40 CFR 52.2270(c) to reflect SIP submittal dates and **Federal Register** citations of EPA action. The ministerial corrections apply to table entries for Sections 115.125, 115.146, 115.148, 115.162, 115.163, 115.164, and 115.165.

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 November 27, 2006 without further notice unless we receive relevant adverse comment by October 30, 2006. 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.

### VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional

requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions under the National Technology Transfer and

Advancement Act of 1995 (15 U.S.C. 272 note), EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not

affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 12, 2006.

**Richard E. Greene,**  
Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart SS—Texas**

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended under Chapter 115 (Reg 5) as follows:

- a. By revising Subchapter B—General Volatile Organic Compound Sources.
- b. By revising Subchapter D—Petroleum Refining and Petrochemical Processes.
- c. By revising Subchapter F—Miscellaneous Industrial Sources.
- d. By revising Subchapter J—Administrative Provisions.

**§ 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 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds				
*	*	*	*	*
Subchapter B—General Volatile Organic Compound Sources				
Division 1: Storage of Volatile Organic Compounds				
Section 115.112 .....	Control Requirements .....	05/08/92	03/07/95, 60 FR 12438.	
Section 115.113 .....	Alternate Control Requirements.	04/26/02	09/28/06 [Insert FR page number where document begins].	

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
Section 115.114 .....	Inspection Requirements .....	05/08/92	03/07/95, 60 FR 12438.	
Section 115.115 .....	Approved Test Methods .....	05/08/92	03/07/95, 60 FR 12438.	
Section 115.116 .....	Monitoring and Recordkeeping Requirements.	04/26/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.117 .....	Exemptions .....	04/26/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.119 .....	Counties and Compliance Schedules.	05/08/92	03/07/95, 60 FR 12438.	
Division 2: Vent Gas Control				
Section 115.120 .....	Vent Gas Definitions .....	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.121 .....	Emission Specifications .....	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.122 .....	Control Requirements .....	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.123 .....	Alternate Control Requirements.	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.125 .....	Testing Requirements .....	12/06/00	07/16/01, 66 FR 36913.	
Section 115.126 .....	Monitoring and Recordkeeping Requirements.	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.127 .....	Exemptions .....	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.129 .....	Counties and Compliance Schedules.	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Division 3: Control of Volatile Organic Compound Leaks From Transport Vessels				
Section 115.131 .....	Emission Specifications .....	05/04/94	05/22/97, 62 FR 27964.	
Section 115.132 .....	Control Requirements .....	04/26/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.133 .....	Alternate Control Requirements.	04/26/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.135 .....	Testing Requirements .....	05/04/94	05/22/97, 62 FR 27964.	
Section 115.136 .....	Monitoring and Recordkeeping Requirements.	04/26/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.137 .....	Exemptions .....	04/26/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.139 .....	Counties and Compliance Schedules.	04/26/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Division 4: Industrial Wastewater				
Section 115.140 .....	Industrial Wastewater Definitions.	04/26/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.142 .....	Control Requirements .....	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.143 .....	Alternate Control Requirements.	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.144 .....	Inspection and Monitoring Requirements.	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
Section 115.145	Approved Test Methods	04/26/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.146	Recordkeeping Requirements	10/27/99	12/20/00, 65 FR 79745.	
Section 115.147	Exemptions	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.148	Training Requirements	10/27/99	12/20/00, 65 FR 79745.	
Section 115.149	Counties and Compliance Schedules..	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Division 5: Municipal Solid Waste Landfills				
Section 115.152	Control Requirements	05/04/94	05/22/97, 62 FR 27964.	
Section 115.153	Alternate Control Requirements.	04/26/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.155	Approved Test Methods	05/04/94	05/22/97, 62 FR 27964.	
Section 115.156	Monitoring and Recordkeeping Requirements.	05/04/94	05/22/97, 62 FR 27964.	
Section 115.157	Exemptions.	05/04/94	05/22/97, 62 FR 27964.	
Section 115.159	Counties and Compliance Schedules.	04/26/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Division 6: Batch Processes				
Section 115.160	Batch Process Definitions	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.161	Applicability	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.162	Control Requirements	12/06/00	07/16/01, 66 FR 36913	
Section 115.163	Alternate Control Requirements.	10/27/99	12/20/00, 65 FR 79745	
Section 115.164	Determination of Emissions and Flow Rates.	12/06/00	07/16/01, 66 FR 36913	
Section 115.165	Approved Test Methods and Testing Requirements.	12/06/00	07/16/01, 66 FR 36913.	
Section 115.166	Monitoring and Recordkeeping Requirements.	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.167	Exemptions.	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.169	Counties and Compliance Schedules.	04/26/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
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Subchapter D—Petroleum Refining, Natural Gas Processing, and Petrochemical Processes

Division 1: Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries

Section 115.311	Emission Specifications	04/26/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.312	Control Requirements	12/13/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.313	Alternate Control Requirements.	04/26/02	09/28/06 [Insert <i>FR</i> page number where document begins].	
Section 115.315	Testing Requirements	05/08/92	03/07/95, 60 FR 12438.	
Section 115.316	Monitoring and Recordkeeping Requirements.	04/26/02	09/28/06 [Insert <i>FR</i> page number where document begins].	

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
Section 115.317 .....	Exemptions .....	05/08/92	03/07/95, 60 FR 12438.	
Section 115.319 .....	Counties and Compliance Schedules.	04/26/02	09/28/06 [Insert FR page number where document begins].	
Division 2: Fugitive Emission Control in Petroleum Refineries in Gregg, Nueces, and Victoria Counties				
Section 115.322 .....	Control Requirements .....	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.323 .....	Alternate Control Requirements.	08/08/01	09/28/06 [Insert FR page number where document begins].	
Section 115.324 .....	Inspection Requirements .....	05/08/02	03/07/95, 60 FR 12438.	
Section 115.325 .....	Testing Requirements .....	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.326 .....	Recordkeeping Requirements	12/13/02	09/28/06 [Insert FR page number where document begins].	
Section 115.327 .....	Exemptions .....	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.329 .....	Counties and Compliance Schedules.	08/08/01	09/28/06 [Insert FR page number where document begins].	
Division 3: Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas				
Section 115.352 .....	Control Requirements .....	12/01/04	09/28/06 [Insert FR page number where document begins].	
Section 115.353 .....	Alternate Control Requirements.	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.354 .....	Monitoring and Inspection Requirements.	12/01/04	09/28/06 [Insert FR page number where document begins].	
Section 115.355 .....	Approved Test Methods .....	12/01/04	09/28/06 [Insert FR page number where document begins].	
Section 115.356 .....	Recordkeeping Requirements.	12/01/04	09/28/06 [Insert FR page number where document begins].	
Section 115.357 .....	Exemptions .....	12/01/04	09/28/06 [Insert FR page number where document begins].	
Section 115.359 .....	Counties and Compliance Schedules.	12/01/04	09/28/06 [Insert FR page number where document begins].	
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Subchapter F—Miscellaneous Industrial Sources

Division 1: Cutback Asphalt

Section 115.510 .....	Cutback Asphalt Definitions ...	08/31/99	12/22/99, 64 FR 71670.	
Section 115.512 .....	Control Requirements .....	11/17/04	3/29/05, 70 FR 15769.	
Section 115.513 .....	Alternative Control Requirements.	08/31/99	12/22/99, 64 FR 71670.	
Section 115.515 .....	Testing Requirements .....	08/31/99	12/22/99, 64 FR 71670.	
Section 115.516 .....	Recordkeeping Requirements	11/17/04	3/29/05, 70 FR 15769.	
Section 115.517 .....	Exemptions .....	11/17/04	3/29/05, 70 FR 15769.	Ref 52.2299(c)(88).
Section 115.519 .....	Counties and Compliance Schedules.	11/17/04	3/29/05, 70 FR 15769.	Ref 52.2299(c)(88).

Division 2: Pharmaceutical Manufacturing Facilities

Section 115.531 .....	Emission Specifications .....	05/04/94	05/22/97, 62 FR 27964.	
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EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
Section 115.532	Control Requirements	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.533	Alternate Control Requirements.	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.534	Inspection Requirements	05/04/94	05/22/97, 62 FR 27964.	
Section 115.535	Testing Requirements	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.536	Monitoring and Recordkeeping Requirements.	05/04/94	05/22/97, 62 FR 27964.	
Section 115.537	Exemptions.	05/04/94	05/22/97, 62 FR 27964.	
Section 115.539	Counties and Compliance Schedules.	04/26/02	09/28/06 [Insert FR page number where document begins].	
Division 3: Degassing or Cleaning of Stationary, Marine, and Transport Vessels				
Section 115.541	Emission Specifications	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.542	Control Requirements	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.543	Alternate Control Requirements.	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.544	Inspection Requirements	05/04/94	05/22/97, 62 FR 27964.	
Section 115.545	Approved Test Methods	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.546	Monitoring and Recordkeeping Requirements.	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.547	Exemptions	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.549	Counties and Compliance Schedules.	04/26/02	09/28/06 [Insert FR page number where document begins].	
Division 4: Petroleum Dry Cleaning Systems				
Section 115.552	Control Requirements	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.553	Alternate Control Requirements.	05/04/94	05/22/97, 62 FR 27964.	
Section 115.555	Testing Methods and Procedures.	05/04/94	05/22/97, 62 FR 27964.	
Section 115.556	Recordkeeping Requirements	05/04/94	05/22/97, 62 FR 27964.	
Section 115.557	Exemptions	05/04/94	05/22/97, 62 FR 27964.	
Section 115.559	Counties and Compliance Schedules.	04/26/02	09/28/06 [Insert FR page number where document begins].	
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Subchapter J—Administrative Provisions				
Division 1: Alternate Means of Control				
Section 115.901	Insignificant Emissions	07/13/94	05/22/97, 62 FR 27964.	
Section 115.910	Availability of Alternate Means of Control.	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.911	Criteria for Approval of Alternate Means of Control Plans.	04/26/02	09/28/06 [Insert FR page number where document begins].	

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
Section 115.912	Calculations for Determining Alternate Means of Control Reductions.	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.913	Procedures for Alternate Means of Control Plan Submittal.	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.914	Procedures for an Alternate Means of Control Plan Approval.	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.915	Public Notice Format	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.916	Review of Approved Alternate Means of Control Plans and Termination of Alternate Means of Control Plans.	04/26/02	09/28/06 [Insert FR page number where document begins].	
Division 2: Early Reductions				
Section 115.920	Applicability	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.923	Documentation	04/26/02	09/28/06 [Insert FR page number where document begins].	
Division 3: Compliance and Control Plan Requirements				
Section 115.930	Compliance Dates	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.932	Control Plan Procedure	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.934	Control Plan Deviation	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.936	Reporting Procedure	11/10/93	05/22/97, 62 FR 27964.	
Section 115.940	Equivalency Determination	04/26/02	09/28/06 [Insert FR page number where document begins].	
Section 115.950	Use of Emissions Credits for Compliance.	12/06/00	09/06/06, 71 FR 52698	
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 [FR Doc. E6-15933 Filed 9-27-06; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2006-0728; FRL-8225-1]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Emission Reductions To Meet Phase II of the Nitrogen Oxides (NO<sub>x</sub>); SIP Call**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to convert a conditional approval in the West Virginia State Implementation Plan (SIP) to a full approval. The SIP revision pertains to nitrogen oxides (NO<sub>x</sub>) emission reductions required in West Virginia to meet Phase II of the NO<sub>x</sub> SIP Call. In order to meet the Phase II submission due date, the West Virginia Department of Environmental Protection (WVDEP) adopted its Phase II regulation under its emergency rule procedures. EPA granted conditional approval of the emergency rule contingent upon the WVDEP adopting a permanent rule with an effective date no later than the June 2, 2006 sunset date of its emergency rule and submitting the permanent rule as a formal SIP revision to EPA by July 1,

2006. West Virginia has met all the terms of the conditional approval by adopting its permanent rule with an effective date of May 1, 2006, and submitting the permanent rule to EPA before July 1, 2006. EPA is approving this revision to West Virginia's SIP in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on November 27, 2006 without further notice, unless EPA receives adverse written comment by October 30, 2006. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-