ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2017–0055; FRL–9992–51–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Reasonably Available Control Technology in the Houston-Galveston-Brazoria Ozone Nonattainment Area

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 revisions to the Texas State Implementation Plan (SIP) addressing volatile organic compounds (VOC) revised rules and the State's reasonably available control technology (RACT) analyses for VOC and nitrogen oxides (NO_X). We are approving the revised VOC rules as assisting in reaching attainment of the 2008 ozone National Air Quality Ambient Air Quality Standards (NAAQS or the standard) and as meeting the RACT requirements in the Houston-Galveston-Brazoria 2008 8-hour ozone nonattainment area (HGB area). We are also approving negative declarations for certain VOC source categories subject to RACT in the HGB area. The EPA is also finding that the State's RACT analyses demonstrate that the HGB area meets the VOC and NO_X RACT requirements for this standard.

DATES: This rule is effective on May 30, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2017–0055. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Robert M. Todd, Infrastructure and Ozone Section, EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, TX 75202, 214–665–2156, *Todd.Robert@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Mr. Todd or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our June 26, 2018 proposal (83 FR 29727). In that document we proposed to approve revisions to the Texas SIP pertaining to revised rules for VOC storage tanks and the RACT analyses for VOC and NO_X in the HGB area. We also proposed approving negative declarations for certain VOC source categories subject to RACT in the HGB area and finding that the State's RACT analyses demonstrate that the HGB area meets the VOC and NO_X RACT requirements for this standard.

We received comments on our proposal. One commenter, the Texas Commission on Environmental Quality (TCEQ), wrote to support our proposed action without specific comment on the particulars of our proposal. Another commenter had generally negative comments that were not specific to our proposal, but were substantive in nature. A third commenter had multiple negative comments on what we proposed to approve. A summary of the comments and our responses are below.

II. Response to Comments

Comment: TCEQ was supportive of the EPA's proposal to approve the RACT demonstration and approval into the SIP of changes to the Chapter 115 VOC control regulations.

Response: We thank the commenter for their support.

Comment: One commenter urged the agency to lower the ozone standard below the 2015 ozone NAAQS of 70 ppm. The commenter believes lowering the standard would result in improved air quality and reduced overall cost to the nation.

Response: We understand the commenter's concerns but responding to the commenter's suggestion is beyond the scope of this rule making. Since the comment addresses subjects outside the scope of the proposed action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and make no specific mention of the proposed action, the comment is not germane, and EPA provides no further response.

One comment letter submitted on behalf of the Sierra Club, Earth Justice, Air Alliance Houston, Texas Environmental Justice Advocacy Service and Public Citizen—Texas Office, provided several comments for our consideration. Their comments and our responses are listed below.

Comment: One comment stated a state's RACT implementation plan ''shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.'' 42 U.S.C. Section 7502(c)(1)l 7511a(b)(2). EPA must disapprove the State's RACT demonstration because actual monitoring data demonstrates that the HGB area failed to attain the O3 NAAQS by the attainment date and, therefore, the RACT implemented failed to meet the statutory mandate to ''provide for attainment'' (42 U.S.C. Section 7502(C)(1)) and the State must identify additional and/or stronger controls that are reasonably available and adequate to assure attainment as expeditiously as practicable. The State's RACT plan for HGB area provides for no additional controls beyond what is already required or being achieved. The State's failure to consider adopting more stringent RACT rules for HGB therefore violates the CAA, and accordingly, EPA cannot lawfully approve the RACT plan.

Response: RACT is one of the requirements for attainment plan demonstrations under CAA Section 172(c)(1) (42 U.S.C. Section 7502(c)(1)). CAA Section 172(c)(1) titled ''Nonattainment plans provision in general'' provides that such plan provisions ''shall provide for the implementation of all reasonable control measures as expeditiously as practicable . . . *and shall provide* for attainment of the primary ambient air quality standards.'' 42 U.S.C. 7502(c)(1). When the word ''and'' is used with a series of items written together in a meaningful grouping, it means that all the items listed together must be addressed. When reading a requirement in a statute and it contains an ''and'' with a series of requirements, all of the requirements must be addressed. By taking a strict grammatical approach to the word ''and'', it is faithful to the legislative intent of the statute. Congress clearly meant that nonattainment plans contain reasonable control measures, in this case RACT, as well as provide for attainment of the primary ambient air quality standards.

The comment cites the requirements of attainment plans in nonattainment areas (Clean Air Act Section 172(c)(1)) as what is required to meet RACT under the CAA. 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). Section 182(b)(2) of the Act requires states to submit a SIP revision and implement RACT for major stationary sources in moderate and above ozone nonattainment areas. 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 Control Technique Guidelines (CTG) and Alternative Control Techniques (ACT) documents. See *https://www.epa.gov/ground-level-ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques* for a listing of EPA-issued CTGs and ACTs.

Our action is limited to the State's demonstration of RACT for the HGB area and does not consider whether the HGB area meets any other requirements for attainment plans for nonattainment areas. As discussed in our proposal, the EPA's longstanding definition of RACT for ozone nonattainment areas is 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). Thus, RACT is defined in terms of achievable technology and not whether the RACT requirements in a SIP would result in attainment. Therefore, air quality monitoring data is not relevant for determining whether a state's RACT SIP is approvable under the CAA.

In this action we are only finding that the RACT provisions of 172(c)(1) and 182(b)(2) are being met for the HGB moderate nonattainment area for the purposes of the 2008 ozone standard. We are not taking action on whether the Houston area's moderate area attainment plan is approvable. We note that we have proposed to reclassify the HGB area to serious which requires a serious area attainment plan, a more stringent attainment plan than one that is required for areas classified as moderate (83 FR 56781, November 14, 2018).

Comment: The commenter stated EPA regulations direct the State to review and consider RACT measures submitted by the public, including public comments seeking strengthening of existing measures. 80 FR 12264, 12278–12280 (March 6, 2015). The State failed to adequately consider public suggestions to impose additional monitoring and control techniques for certain sources in the HGB area as well as the suggestion that the State adopt the Federal CTG for oil and natural gas operations. The EPA unlawfully rationalized the State's refusal to consider available control techniques for oil and natural gas sources by citing that the State is not required to meet the CTG for oil and natural gas until a date after the SIP submittal and the State did not consider measures identified in comments.

Response: Per EPA's rulemaking on the requirements for states to address 2008 ozone NAAQS requirements (80 FR 12264, 12278–12280 (March 6, 2015)), states should refer to the existing CTGs and ACTs for purposes of meeting their RACT requirements, as well as all relevant information (including recent technical information and information received during the public comment period) that is available at the time that they are developing their RACT SIPs for the 2008 ozone NAAQS. In some cases, it is appropriate for states to conclude that sources already addressed by RACT determinations for the 1-hour and/or 1997 ozone NAAQS do not need to implement additional controls to meet the 2008 ozone NAAQS RACT requirement. *Id.* at 12280. That is because, in some cases, RACT for the 2008 standard is the same control technology as the initial RACT determination under the 1-hour or 1997 standard because the fundamental control techniques, as described in the CTGs and ACTs, are still what is reasonably available. *Id.* In cases where controls were applied as a result of the 1-hour or 1997 ozone NAAQS RACT requirement, we expect that any incremental emissions reductions from application of a second round of RACT controls may be small and, therefore, the cost for advancing that small additional increment of reduction may not be reasonable. *Id.* In contrast, a RACT analysis for uncontrolled sources would be much more likely to find that new RACT-level controls are economically and technically feasible. *Id.*

Our analysis of Texas RACT SIP shows that there would be no appreciable reduction in VOC or NO_X emissions as a result of a new application of RACT in the HGB area for the existing sources and the newer declared affected sources. For example, for the Glass Manufacturing source identified by the State, it would be technically infeasible to require additional NO_X controls on the furnace since there would be no appreciable NO_X reductions from the addition of NO_X controls. Also, the vegetable oil manufacturing facility already meets the basic control requirements of both the existing vent gas control requirements in the State SIP and previous RACT determinations in the U.S. and additional or altered controls are not available at this time. For other established sources in the HGB nonattainment area, except for the storage tanks discussed later in this document, they are already required to meet minimum efficiency standards set out in the State SIP and additional or new control requirements would not be technically or economically feasible.

We do agree with the State's analysis that additional VOC controls on the storage tanks are feasible and a viable means to reduce emissions in the HGB area. We find their proposal to increase the control efficiency requirements for control devices on these sources to be RACT in this instance. This action will also have the added benefit of improving compliance with State SIP regulations by making the HGB requirements synonymous with the requirements in the Dallas-Fort Worth nonattainment area.

An examination of the transcript of the public hearing indicates a representative of the Air Alliance Houston suggested that the State implement continuous, direct monitoring technology to assist in compliance with SIP rules. As to oil and gas specifically, the Air Alliance representative stated, ''So to the extent possible, we prefer to see continuous emission monitors in place at flares at emission points generally.'' In its finalized SIP revision, TCEQ responded in writing to the comment and stated that in the case of the continuous emission monitoring for flares, the significant technical and cost constraints associated with post combustion monitoring of flare emissions precluded inclusion of this monitoring method for this type of source.[1] The State acknowledged the value of continuous monitoring of certain gas streams to flares for sources combusting highly reactive VOCs, which is currently required, however

[1] The State's analysis and response to comments received at the State's public hearing is provided by the State in their final SIP submittal. See EPA–R06–OAR–2017–0054–0004, pages 236–241.

the State found such monitoring was not necessary to satisfy RACT for flares in the current rulemaking. We find that the State adequately responded to the comment raised at the public hearing with regards to continuous emission monitoring for flaring and we agree with the State that RACT for the 2008 ozone NAAQS does not require continuous emission monitoring for flaring.

As to requiring the State to comply with Oil and Natural Gas CTG, the EPA acknowledges that the State did not owe us a SIP to address the Oil and Natural Gas CTG at the time of the SIP submittal. That obligation will be dealt with in a separate SIP submittal that EPA will act on in a separate notice and comment rulemaking action. The Draft CTG for the Oil and Natural Gas Industry (EPA–453/P–15–001) was made available for comment by the EPA in September 2015. See 80 FR 56577 (Sept. 18, 2015). The final document, Control Technique Guidelines for the Oil and Natural Gas Industry (EPA–453/B–16–001) was issued, and published in the **Federal Register**, October 27, 2016. See 81 FR 74798. In the final **Federal Register** notice, EPA required states to submit SIP revisions addressing the Oil & Natural Gas CTG no later than October 27, 2018, with RACT requirements effective no later than January 1, 2021.[2] During the time the State performed their RACT analysis for the 2008 Ozone NAAQS and adopted revisions to their VOC regulations to implement new control measures in the HGB area, there was no EPA requirement for the State to consider this CTG as part of their RACT analysis and thus it was not required to be included at the time of submittal by the State (December 29, 2016). In a separate rulemaking, EPA will act upon the State's submittal addressing this October 27, 2016 final rule.

See the TSD for further information on how all the major oil and gas sources in the HGB area are controlled to meet RACT.

Comment: The commenter stated that Texas unlawfully allows RACT sources to avoid enforcement based on claims violations occur during startup, shutdown and malfunction (SSM) conditions. The commenter also alleges that the State's control requirements are less protective than required for RACT because the State affirmative defense provisions allow sources to emit above RACT levels without sanction. The commenter stated that Texas is required to conform its RACT regulations to EPA's 2015 SSM SIP Action (80 FR 33840 (June 12, 2015)).

Response: In our 2015 SSM SIP Action, EPA issued a SIP call to Texas for affirmative defense provisions included in the SIP (80 FR 33840 (June 12, 2015)). EPA issued a SIP Call to Texas based on an interpretation that the Texas SIP affirmative defense provisions for upsets and unplanned maintenance, startup, and shutdown activities (which EPA considers equivalent to ''malfunctions'') operate to alter or eliminate the statutory jurisdiction of the courts to assess civil penalties, contrary to CAA sections 113 and 304. EPA did not find that the Texas affirmative defense provisions allow sources to ''violate Clean Air Act emission limitations during startup, shutdown, and malfunction events without consequences'' or allow ''sources to emit above RACT levels without sanction,'' and commenter's allegations in this rulemaking that the Texas affirmative defense provisions do so is inaccurate. All excess emissions, including those for which a source owner or operator may assert an affirmative defense, are unauthorized emissions and violations subject to an enforcement action. An ''emission event'' defined at 30 TAC 101.1 includes upset events that result in unauthorized emissions. Therefore, commenter is incorrect that the Texas affirmative defense provisions render the State's control requirements less protective than RACT because they allow sources to emit above RACT levels without sanction.

At the outset, EPA views the Texas affirmative defense provisions as providing a defense only against the imposition of civil penalties; they do not bar enforcement actions against RACT sources or limit the imposition of injunctive relief in such a case, if necessary. Accordingly, the Texas affirmative defense provisions do not allow RACT sources in the State to violate RACT or the NAAQS without sanction. Further, EPA does not believe that the Texas affirmative defense provisions allow large amounts of emissions that may cause or contribute to exceedances of NAAQS, as alleged by the commenter. In fact, one of the criteria that must be proven by a Defendant who asserts an affirmative defense under the Texas SIP provision is that the ''unauthorized emissions did not cause or contribute to an exceedance of the national ambient air quality standards (NAAQS), prevention of significant deterioration (PSD) increments, or to a condition of air pollution.'' See, *e.g.,* 30 TAC 101.222(b)(11). The Texas affirmative defense provisions do not apply to actions for injunctive relief, including those that may be required to protect the NAAQS. See. *e.g.,* 30 TAC 101.222(b) (''other than claims for . . . injunctive relief''). EPA views the Texas affirmative defense provisions as solely related to the imposition of civil penalties for violations and not to any expressed air quality concern. Further, the current EPA-approved Texas SIP does not provide any affirmative defense for an emissions event or emissions events that are determined to be excessive emission events. The Texas SIP provides that such events trigger requirements for the owner or operator of the source to submit a corrective action plan and are subject to a penalty action. See 30 TAC 101.223. Under 30 TAC 101.222(a), to determine whether an emissions event or emissions events are excessive, the following factors are evaluated: (1) The frequency of the facility's emissions events; (2) the cause of the emissions event; (3) the quantity and impact on human health or the environment of the emissions event; (4) the duration of the emissions event; (5) the percentage of a facility's total annual operating hours during which emissions events occur; and (6) the need for startup, shutdown, and maintenance activities.

The commenter also claimed that Texas is required to conform its RACT regulations to EPA's 2015 SSM SIP Action. The Texas affirmative defense provisions that were subject to the SIP call issued by EPA in 2015 are general provisions and are not specifically part of Texas's RACT regulations and as discussed above do not excuse a violator from enforcement action. Region 6 on April 23, 2019 signed a **Federal Register** document in which it considers an alternative interpretation of affirmative defense provisions in SIPs in states in Region 6 that departs from the EPA's 2015 policy on this subject. In that same **Federal Register** document, Region 6 proposed to make a finding that the affirmative defense provisions in the Texas SIP are adequately protective and do not interfere with any applicable requirement of the CAA and would be consistent with the alternative interpretation if adopted. Accordingly, Region 6 proposed to withdraw the SIP call issued to Texas that was published on June 12, 2015. Interested stakeholders are encouraged to refer to that document for further details.

Comment: The commenter stated the State unlawfully failed to revisit and

[2] On October 20, 2016 the EPA issued guidance on implementation of the CTG in the memorandum ''Implementing Reasonably Available Control Technology Requirements for Sources Covered by the 2016 Control Techniques guidelines for the Oil and Natural Gas Industry.'' See the answers to questions 1 and 2 of the attachment to this memo for details on the timing of implementation of this CTG.

reevaluate RACT for source categories for which the State previously found (in its SIPs for the 1997 and/or 1-hour standard) that no additional controls were needed. The commenter quoted EPA's final rule implementing the 2008 ozone NAAQS to support its position: ''there are cases where the initial RACT analysis under the 1-hour standard or the 1997 standard for a specific source or source category concluded that no additional controls were necessary. In such cases, a new RACT determination is needed to consider whether more cost-effective control measures have become available for new sources that were not previously regulated. A re-analysis may determine that controls are now economically and technically feasible and are necessary to meet the RACT requirements.'' 80 FR 12264 at 12280 (March 6, 2015). The State's RACT determination does not attempt to identify, revisit, or reevaluate RACT for all source categories where the State found, under the 1-hour or 1997 standard that no additional controls are necessary.

Response: We agree with the commenter that Texas needs to reevaluate RACT for the 2008 ozone standards. We, however, disagree with the commenter that Texas did not reevaluate RACT for all source categories for the 2008 ozone standards. As stated in our rulemaking on the requirements for states to address the 2008 ozone requirements, states should refer to the existing CTGs and ACTs for purposes of meeting their RACT requirements, as well as all relevant information (including recent technical information and information received during the public comment period) that is available at the time that they are developing their RACT SIPs for the 2008 ozone NAAQS. In some cases, it is appropriate for states to conclude that sources already addressed by RACT determinations for the 1-hour and/or 1997 ozone NAAQS do not need to implement additional controls to meet the 2008 ozone NAAQS RACT requirement. *Id.* at 12280. That is because, in some cases, a new RACT determination under the 2008 standard would result in the same or similar control technology as the initial RACT determination under the 1-hour or 1997 standard because the fundamental control techniques, as described in the CTGs and ACTs, are still applicable. *Id.* In cases where controls were applied due to the 1-hour or 1997 NAAQS ozone RACT requirement, we expect that any incremental emissions reductions from application of a second round of RACT controls may be small and, therefore, the cost for advancing that small additional increment of reduction may not be reasonable. *Id.* In contrast, a RACT analysis for uncontrolled sources would be much more likely to find that new RACT-level controls are economically and technically feasible. *Id.* In portions of 2008 nonattainment areas where control technologies for major sources or source categories were previously reviewed and controls applied to meet the RACT requirement under the 1-hour or the 1997 ozone NAAQS, states should review and, if appropriate, accept the initial RACT analysis as meeting the RACT requirements for the 2008 ozone NAAQS. *Id.* Absent data or public comments indicating that the previous RACT determination is no longer appropriate, the state need not adopt additional SIP controls to meet the new RACT requirement for these sources. *Id.* In such cases, the state's SIP revision submitted after notice and comment should contain a certification, with appropriate supporting information (including consideration of new data), indicating that these sources are already subject to SIP-approved requirements that still meet the RACT obligation. *Id.* There are cases where the initial RACT analysis under the 1-hour standard or the 1997 standard for a specific source or source category concluded that no additional controls were necessary. *Id.* In such cases, a new RACT determination is needed to consider whether more cost-effective control measures have become available for sources that were not previously regulated. *Id.* A re-analysis may determine that controls are now economically and technically feasible and are necessary to meet the RACT requirement. *Id.*

The State received no new data or public comments indicating that the previous VOC RACT determination is no longer appropriate except for three source categories: storage tank, Vegetable Oil Manufacturing Operations, and the Oil and Natural Gas Industry. Two of those three source categories underwent additional analysis by the State and we are approving the State's RACT determination resulting from that analysis. The third category, Oil and Natural Gas, is not addressed in this SIP submittal. It will be addressed in a separate SIP and we will analyze this CTG at that time. For a more detailed explanation of each of the source categories see below.

For the majority of source categories provided in the State's SIP, the State kept the same standards approved by EPA as meeting RACT requirements for the 1-hour and the 1997 8-hour ozone NAAQS.[3] The State referred 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 that the existing standards were still equivalent to RACT for the 2008 ozone NAAQS. Except in the case of VOC storage tank sources, the State concluded, that sources do not need to implement additional controls to meet the 2008 ozone NAAQS RACT requirement because the control techniques implemented to meet the RACT requirements of the 1-hour and 1997 standards are still applicable and equivalent to a RACT determination for the 2008 standard. In addition, the State determined that the Chapter 115 rules address VOC RACT for all source categories in the HGB area for the 2008 1-hour ozone standard and 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 sufficiently controlled. See TCEQ's December 29, 2016 SIP, Table F–1 titled ''State Rules Addressing VOC RACT Requirements in CTG Reference Documents,'' (listing VOC CTG source categories, its reference document, and the State rules addressing VOC RACT requirements). Table F–2 titled ''State Rules Addressing VOC RACT Requirements in ACT Reference Documents,'' in TCEQ's December 29, 2016 SIP (listing State rules addressing VOC RACT in ACT reference documents). 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). 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 and 1997 8-hour ozone NAAQS (71 FR 52676, September 6, 2006 and 79 FR 21144, April 15, 2014). Texas's SIP submittal relies on those EPA-approved Chapter 115 rules for the 1-hour and 1997 8-hour ozone NAAQS to fulfill RACT

[3] EPA previously found that the Texas rules meet VOC and NO_X RACT for major sources using the 25 tpy definition, as well as VOC RACT requirements for all applicable CTG categories in the eight county HGB 1997 8-hour ozone NAAQS nonattainment area. 78 FR 19599, April 2, 2013, docket number EPA–R06–OAR–2012–0100, and reaffirmed at 80 FR 16291, March 27, 2015, docket number EPA–R06–OAR–2013–0804. We are not proposing to alter this previous determination. We also found the State's rules met NO_X and VOC RACT for the 1-hour ozone standard. 60 FR 12438, March 7, 1995.

requirement for CTG and non-CTG VOC major sources for the 2008 8-hour ozone NAAQS. See docket EPA–R06–OAR–2005–TX–0018 and EPA– R06–OAR–2012–0100 (available through the *Regulations.gov* website at: *https://www.regulations.gov/*). 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, are still applicable and a new RACT determination by Texas would result in the same or similar control technology as the RACT determinations made for the 1-hour or 1997 standard.[4] 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 controlled.

For storage tanks, the State revised the storage tank rules, Chapter 115, Subchapter B, Division 1, increased the control efficiency from 90% to 95%; expanded inspection, repair, and recordkeeping requirements for fixed roof crude oil and condensate storage tanks with uncontrolled VOC emissions of at least 25 tpy in the HGB area; and expanded the rule applicability for fixed roof crude oil and condensate storage tanks. The State found that the storage tank rule revisions address RACT for CTG and non-CTG major source VOC storage tanks in the HGB area. The TCEQ requirements controlling VOC emissions from storage tanks are found in 30 TAC, Chapter 115, Subchapter B, Division 1 (Storage of Volatile Organic Compounds). Texas revised Sections 115.112, 115.114, 115.118 and 115.119 for the HGB area to match requirements for the DFW area; the EPA previously approved the storage tank update requirements (increased control efficiency of 95%; inspection, repair, and recordkeeping requirements; and expanded applicability for fixed roof crude oil and condensate storage tanks) as RACT for the 1997 8-hour DFW nonattainment area (79 FR 45105 (August 4, 2014)). The major changes are to Section 115.112, Control Requirements, which increases control efficiency of control devices, other than vapor recovery units or flares, from 90% to 95% for VOC storage tanks in the HGB area and expands the requirement to control VOC emissions to sources not previously covered; Section 115.114, Inspection Requirements, which adds the requirement to inspect closure devices on fixed roofs tanks to prevent VOC flash gassing; Section 115.118, Recordkeeping Requirements, which expands recordkeeping requirements for fixed roof crude oil and condensate storage tanks with uncontrolled VOC emissions of at least 25 tons per year to the HGB area, as well as extends record retention for affected VOC storage tanks and expands the rule applicability to include the aggregate of fixed roof crude oil and condensate storage tanks at pipeline breakout stations in the HGB area; and, Section 115.119, Compliance Schedules, which clarifies the responsibility for sources in the HGB area to comply and defines July 20, 2018 as the final date for owners and operators to comply with the new standards for the area. The increased control efficiency requirements; inspection, repair, and recordkeeping requirements; and expanded applicability for fixed roof crude oil and condensate storage tanks are already in place for VOC storage tanks in the DFW area. We have approved the rule changes into the State SIP and found they meet VOC RACT for the DFW area.[5] We are incorporating by reference the docket for that decision.[6] We agree with the State that the adopted rule revisions address RACT for both CTG and non-CTG major VOC storage tanks in the HGB area. We are also, approving the submitted revisions to the storage tank rule for the HGB area, as described in detail in the TSD to the proposal, as part of the SIP and as meeting VOC RACT for the HGB area for the 2008 8-hour NAAQS. The modifications to the storage tank rules will reduce working emissions from these vessels by requiring an increase in control efficiency of some devices used to limit VOCs exiting tankage; expanding the number of vessels requiring controls in the area to include aggregated tankage at pipeline breakout stations; include oil and condensate tanks as sources required to use flash emission controls; and, require inspection of closure devices on fixed roof tanks to prevent flash emissions from crude oil or condensate transfer tanks in the area. By making these requirements consistent with previously approved rule requirements in the DFW NA area, it is expected compliance with the tankage regulations will be enhanced.

During their RACT analysis, TCEQ also identified a Vegetable Oil Manufacturing Operations source emitting VOCs in a quantity greater than the major source definition required under the previous classification for the HGB area. TCEQ's analysis of the controls in place at the facility showed that the source met control recommendations listed in the CTG document for the Vegetable Oil Manufacturing Operations source category and therefore met RACT.[7]

As we explained at length in our proposal and in the TSD to the proposal, Texas thoroughly examined the area's emissions inventory to find any NO_X emissions sources covered by the EPA's NO_X ACTs great enough to require control under their RACT approved NO_X rules, as well as any major other sources of NO_X emissions that would need to implement RACT. One result of their review of NO_X sources in the HGB area identified a facility falling under the Glass Manufacturing ACT category. The State determined the source's existing controls, required by their State new source review program, were consistent with RACT.[8] For a full discussion of the State's NO_X RACT analysis, including this source and the rationale for including existing controls as RACT for the HGB area, please see the TSD to the proposal.

Comment: The commenter stated the threshold for the application of RACT should be 25 tpy, not 100 tpy, because the HGB area should be classified as a ''severe'' nonattainment area under both the 1-hour and 1997 NAAQS. The EPA's redesignation of the HGB area as moderate using the ''redesignation substitute'' method was illegal and is being challenged in the Fifth Circuit. (1979 and 1997 redesignation substitute for HGB area: 80 FR 63429 (October 20, 2015) and 81 FR 78691 (November 8, 2016).

Response: We disagree. This HGB area RACT SIP was submitted to fulfill RACT

[4] See our proposal at 83 FR 29727, page 29728 and our TSD for the proposal ''TSD 2008 SIP Revision and Oxone VOC–NO_X RACT—HGB NA Area'', page 18, both available through the docket EPA–R06_OAR–2017–0055.

[5] We approved those rules on December 21, 2017. See 82 FR 60546. The codification of the Texas SIP approved by EPA can be found at 40 CFR 52.2270(c).

[6] See is EPA–R06–OAR–2015–0832, available through the *Regulations.gov* website at: *https://www.regulations.gov/*.

[7] See TCEQ NSR # 56114 and 30 TAC Sections 115.420–115.429, which require control of VOC emissions via a mineral oil scrubber and condenser that operate with a 90% control efficiency. This limit is consistent with the withdrawn Vegetable Oil Manufacturing CTG and a subsequent RACT determination made for a similar source in the San Juaquin Valley Unified Air Pollution Control District in California.

[8] See TCEQ NSR Permit 42623, special condition #9, which requires use of an oxy-fired furnace and imposes a NO_X emissions performance standard of 1.48 lbs NO_X per ton of glass produced. This is consistent with the control requirements recommended in the Alternative Control Techniques Guidelines for NO_X Emissions from Glass Manufacturing, EPA–453/R–94–037, June 1994.

requirements for the 2008 ozone NAAQS for the HGB area. The HGB area is classified as moderate for the 2008 ozone NAAQS. (81 FR 90207, December 14, 2016). In order to meet the requirements of the 2008 ozone NAAQS standard, Texas just needs to do RACT for the HGB area at moderate level requirements for the 2008 ozone NAAQS.

III. Final Action

We are approving the revisions to 30 TAC Sections 115.112, 115.114, 115.118 and 115.119 adopted by TCEQ on December 15, 2016 and submitted to the EPA on December 29, 2016, for inclusion into the Texas SIP. We are also approving the HGB RACT demonstration submitted by the TCEQ on December 29, 2016. We are also approving negative declarations for certain VOC source categories subject to RACT in the HGB area and are finding that the State's RACT analyses demonstrate that the HGB area meets the VOC and NO_X RACT requirements for this standard. This action is being taken under section 110 of the Act.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the revisions to the Texas regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 6 Office (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.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 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 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).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 1, 2019. 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: April 24, 2019.

David Gray,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. In § 52.2270:

■ a. In paragraph (c), the table titled ''EPA Approved Regulations in the Texas SIP'' is amended by revising the entries for Sections 115.112, 115.114, 115.118 and 115.119.

■ b. In paragraph (e), the second table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding an entry for ''HGB VOC and NO_X RACT Finding, except for the 2016 EPA-issued CTG for the Oil and Natural

Gas Industry, EPA–453/B–16–001'' at the end of the table.

The revisions and addition read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Section 115.112	Control Requirements	12/15/2016	4/30/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
Section 115.114	Inspection Requirements	12/15/2016	4/30/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
Section 115.118	Recordkeeping Requirements.	12/15/2016	4/30/2019, [Insert **Federal Register** citation].	
Section 115.119	Compliance Schedules ..	12/15/2016	4/30/2019, [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

(e) * * *

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

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/ effective date	EPA approval date	Comments
*	*	*	*	*
HGB VOC and NO_X RACT Finding, except for the 2016 EPA-issued CTG for the Oil and Natural Gas Industry, EPA–453/B–16–001.	HGB 2008 Ozone NAAQS non-attainment area.	12/29/2016	4/30/2019, [Insert FR page number where document begins].	Vegetable Oil Mfg category, previously sited under negative declarations for HGB area, is added to RACT determinations.

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[FR Doc. 2019–08710 Filed 4–29–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 160

Notification of Enforcement Discretion Regarding HIPAA Civil Money Penalties

AGENCY: Office of the Secretary, HHS.

ACTION: Enforcement Discretion.

SUMMARY: This notification is to inform the public that the Department of Health and Human Services (HHS) is exercising its discretion in how it applies HHS regulations concerning the assessment of Civil Money Penalties (CMPs) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as such provision was amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act. Current HHS regulations apply the same cumulative annual CMP limit across four categories of violations based on the level of culpability. As a matter of enforcement discretion, and pending further rulemaking, HHS will apply a different cumulative annual CMP limit for each of the four penalties tiers in the HITECH Act.

DATES: This exercise of enforcement discretion is effective indefinitely.

FOR FURTHER INFORMATION CONTACT: Rachel Seeger at (202) 619–0403 or (800) 537–7697 (TDD).

SUPPLEMENTARY INFORMATION:

I. Background

When enacting the HIPAA administrative simplification provisions, Congress authorized HHS to impose a maximum CMP of $100 for each violation, subject to a calendar year cap of $25,000 for all violations of an identical requirement or prohibition. Public Law 104–191, section 262(a), 110 Stat. 1936, 2028 (Aug. 21, 1996) (adding Social Security Act section 1176(a)(1), 42 U.S.C. 1320d–5(a)(1)).

HHS issued an interim final rule (IFR) on April 17, 2003, setting forth the procedural requirements that the Department would follow in enforcing HIPAA and its regulations, including procedures for providing notice, managing hearings, and issuing administrative subpoenas. HHS issued a proposed rule on the substantive enforcement provisions on April 18, 2005. HIPAA Administrative Simplification: Enforcement; Proposed Rule, 70 FR 20224 (April 18, 2005). HHS issued a HIPAA enforcement final rule on February 16, 2006, which, among other things, incorporated penalties consistent with the $100 per violation cap and $25,000 annual cap in HIPAA. HIPAA Administrative Simplification: