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[FR Doc. 06–7409 Filed 9–5–06; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R06–OAR–2005–TX–0033; FRL–8216–6]**

## Approval and Promulgation of State Implementation Plans; Texas; Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program for the Houston/Galveston/Brazoria Ozone Nonattainment Area

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving revisions to the Texas State Implementation Plan concerning the Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program for the Houston/Galveston/Brazoria ozone nonattainment area.

**DATES:** This rule is effective on October 6, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2005–TX–0033. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Permitting Section (6PD–R), 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 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 related to this SIP revision, and which is part of the EPA docket, 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:** Adina Wiley, Air Permitting Section (6PD–R), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone 214–665–2115, *wiley.adina@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

**Outline**



### I. What action is EPA taking?

EPA is approving the Highly Reactive Volatile Organic Compound Emissions Cap and Trade (HECT) Economic Incentive Program (EIP), published at Texas Administrative Code (TAC) Title 30, Chapter 101 General Air Quality Rules, Subchapter H Emissions Banking and Trading, Division 6, sections 101.390–101.394, 101.396, 101.399–101.401, and 101.403. These revisions were adopted by the Texas Commission on Environmental Quality (TCEQ) on December 01, 2004, and submitted to EPA on December 17, 2004, as a revision to the State Implementation Plan (SIP). As discussed in our proposed action at 70 FR 58144, we conclude that the HECT program is consistent with section 110(l) of the Clean Air Act. We proposed approval of the HECT program as an element of the Texas SIP for the Houston/Galveston/Brazoria (HGB) ozone nonattainment area on October 5, 2005 (70 FR 58138).

### II. What is the background for this action?

The HECT program was adopted as a state regulation on December 1, 2004. The TCEQ developed the program as part of its mid-course review of the 1-hour ozone attainment plan for the HGB ozone nonattainment area. The mid-course review showed that ozone reductions comparable to those achieved by the 90 percent reduction in industrial nitrogen oxide ($NO_X$) emissions and the enforceable commitments for an additional 42 tons per day of $NO_X$ reductions required in the November 2001 (66 FR 57160) approved SIP could be achieved through a combination of 80 percent reduction in industrial $NO_X$ emissions and additional targeted control of certain highly-reactive volatile organic compounds (HRVOCs). TCEQ has chosen to revise its attainment strategy accordingly, decreasing the emphasis on $NO_X$ control and requiring additional reductions of HRVOCs.

In our proposed approval of the HECT program, we stated that final action on the HECT would not occur until we published final approval of the attainment demonstration, which is being processed concurrently with this approval. For a further discussion of the attainment demonstration and EPA's responses to comments on this action, please see our action on the attainment demonstration (EPA–R06–OAR–2005–TX–0018), which is being published elsewhere in today's **Federal Register**.

### III. What are EPA's responses to comments received on the proposed action?

EPA's responses to comments submitted by Galveston-Houston Association for Smog Prevention (GHASP), Environmental Defense (Texas Office), the Lone Star Chapter of the Sierra Club, and Public Citizen (Texas Office) on November 4, 2005, are as follows. EPA has summarized the comments below; the complete comments can be found in the administrative record for this action (EPA–R06–OAR–2005–TX–0033). While the comments generally discuss VOC trading programs, we are only addressing comments specific to HRVOCs and the HECT. [1]

*Comment 1:* The EPA uses the term ''less-reactive VOC'', but the TCEQ term ''other VOC'' (OVOC) is preferable. Some of the other VOCs are actually highly reactive on a molar basis, but are not emitted as widely or in as great a quantity as the designated HRVOCs.

*Response to Comment 1:* We agree that the term ''other VOC'' (OVOC) will

[1] During the comment period, EPA did not receive comments regarding environmental justice and the HECT program. However, during the finalization process we have reevaluated our interpretation of the definition of Environmental Justice as found in Executive Order 12898. In our proposed approval of the HECT program, we stated that ''environmental justice concerns arise when a trading program could result in disproportionate impacts on communities populated by racial minorities, people with low incomes, or Tribes.'' On further review, we believe the following description is more consistent with E.O. 12898: ''Environmental justice concerns can arise when a final rule, such as a trading program, could result in disproportionate burdens on particular communities, including minority or low income communities.'' This revised language does not alter our determination that the HECT program does not raise environmental justice concerns.

more accurately define VOCs that are not categorized by TCEQ as highly-reactive. We are using the term OVOC instead of ''less-reactive VOC'' in our final actions on the HGB attainment demonstration and associated rulemakings.

*Comment 2:* There are problems with the inventory of VOC and HRVOC emissions in the HGB nonattainment area.

*Response to Comment 2:* While EPA acknowledges that there have been past VOC emission inventory problems from sources associated with the petrochemical industry (see our proposed approval of the revisions to the HGB attainment demonstration, 70 FR 58119), EPA believes that the emission inventory developed by TCEQ for the HGB nonattainment area is an acceptable approach to characterizing the emissions in the HGB nonattainment area. In addition, we are incorporating by reference our responses to comments provided in our approval of the attainment demonstration for the HGB ozone nonattainment area (EPA–R06–OAR–2005–TX–0018). Those responses more specifically address the commenters' concerns regarding the development and use of the imputed inventory, characterization of other VOCs in the inventory, and appropriate emissions monitoring techniques for flares, fugitive emissions, and upsets. Also, as will be discussed more fully in our responses to Comments 3 and 4, the implementation of the HECT and the associated monitoring and reporting requirements will serve to improve the emissions inventory for HRVOCs in the HGB nonattainment area.

*Comment 3:* The VOC and HRVOC trading programs use unreliable data, which cannot be replicably measured. There are problems with current methods for measurement of HRVOC and VOC emissions; therefore, the VOC and HRVOC trading programs do not meet EPA's EIP Guidance for quantification.

*Response to Comment 3:* EPA disagrees. The proposed HECT rule, at 70 FR 58138, describes the basis for EPA's conclusion that the HECT rule satisfies the EIP Guidance (''Improving Air Quality with Economic Incentive Programs'' EPA–452/R–01–001, January 2001) criteria on quantifiability, which are found in Chapter 4 (''Fundamental Principles of All EIPs'').

Emissions and emission reductions attributed to an EIP are quantifiable if they can be reliably and replicably measured: the source must be able to reliably calculate the amount of emissions and emission reductions from the EIP strategy, and must be able to replicate the calculations. Under the HECT program, sources address the element of quantification by using a quantification protocol that has been approved by TCEQ and EPA. Both agencies have important roles in ensuring these protocols provide reliable and replicable emission measurements. The approved quantification protocols for calculating annual HRVOC emissions for compliance with the HECT program are contained in sections 115.725 and 115.764 of 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds. Additionally, VOC emission reduction credits (ERCs) that are eligible for conversion into HECT allowances must also be quantified using the monitoring and testing methods required in sections 115.725 and 115.764 and certified under the Emission Credit Banking and Trading program. The monitoring and testing protocols in sections 115.725 and 115.764 all require continuous monitoring systems; EPA considers continuous monitoring systems reliable and replicable (*see* Section 5.3(a) of the EIP Guidance). If the monitoring and testing data required under sections 115.725 and 115.764 are unavailable, sources can calculate HRVOC emissions for HECT compliance during this time period through continuous monitoring data, periodic monitoring data, testing data, data from manufacturers, and engineering calculations. This measurement hierarchy agrees with the emission measurement protocol hierarchy that EPA recommends in the EIP Guidance (*see* Section 5.2(d)).

*Comment 4:* TCEQ and EPA lack confidence in current methods for measuring emissions. This lack of confidence increases the risks associated with a market-based trading program, until the TCEQ is able to reconcile ambient monitoring with industry emission inventories. For example, trading could exacerbate the challenge of identifying the cause of any program failures because comparisons of ambient monitoring trend data to emission inventory data will require consideration of the timing and magnitude of trades.

*Response to Comment 4:* EPA disagrees. We have discussed above in response to Comments 2 and 3 our conclusion that the methods used for measuring emissions under the HECT program are consistent with EPA policy and guidance, and that the emissions inventory developed by TCEQ is an acceptable approach to characterizing the emissions in the HGB nonattainment area. Further, to the extent there are concerns related to differences between ambient monitoring data and the HGB industrial emissions inventory, the operation of the HECT will serve to increase rather than decrease the level of certainty. Specifically, the use of approved quantification methods required under the HECT will extend monitoring to vent gas streams, flares, and cooling tower heat exchanges systems that might not have been adequately monitored before. Accordingly, accounting for actual emissions under the HECT—which is required of each source subject to this program—should improve the industrial emissions inventory.

*Comment 5:* The EPA should find that it is premature for TCEQ to allow trading of unquantifiable emissions of VOCs in the HGB nonattainment area. If either the source or the recipient incorrectly estimates the emissions involved in a trade, the region is at risk of a net increase in emissions as a result of the trade. Until refineries and chemical plants are able to routinely quantify their VOC emissions, EPA should not allow trading of these VOC emissions.

*Response to Comment 5:* EPA disagrees that VOC emissions should be ineligible for trading in the HGB nonattainment area. EPA believes that allowing the petrochemical industry to trade VOC emissions under the HECT program is appropriate because the TCEQ has made changes in regulatory requirements to require that certain sources of VOC emissions comply with continuous emissions monitoring requirements by the end of 2006. Additionally, as discussed in the EIP Guidance, we have concluded that cap and trade programs can be effective ways to reduce emissions, especially from large stationary sources. Each trade is part of a system designed to significantly reduce emissions of the pollutants subject to the cap. EPA also believes that allowing the petrochemical industry to trade HRVOC emissions under the HECT program is appropriate notwithstanding the commenter's concern about emissions estimates, because the HECT program satisfies the EIP Guidance criteria for quantification. In the HECT program, sources trading HECT allowances must quantify their emissions using the approved protocols in 30 TAC Chapter 115. The use of approved protocols ensures that sources correctly estimate their excess allowances or the amount of allowances needed to cover actual emissions. Additionally, TCEQ included a five percent safety margin in setting the overall level of annual emissions allowed under the HECT, which should produce a net annual average HRVOC

emissions decrease in the HGB nonattainment area below the level set by the cap.

*Comment 6:* EPA should not approve the exclusion of emissions above the short-term limit from the annual cap if a trading program is approved.

*Response to Comment 6:* EPA disagrees. We requested specific comment on this feature of the program because, as noted by us and the commenters, it departs from past practices with cap and trade programs. The commenters made one specific point in this regard, which we address in Comment 7. Our response to the more general comment follows.

A key feature of the HGB attainment strategy is the two-part approach to HRVOC emissions. Routine HRVOC emissions are targeted and reduced through an annual cap-and-trade program, while the non-routine emissions from emission events, maintenance, start-up and shutdown are controlled through a short-term limit of 1200 lb/hour. When exceedances of the short-term limit occur, the hourly emissions above 1200 lb/hr are not counted toward compliance with the annual cap but are still subject to enforcement as a violation of the short-term limit. EPA expects that the root cause of the conditions giving rise to any particular exceedance of the short-term limit will be identified and corrected as expeditiously as practicable. The source is still required to use good air pollution control practices consistent with the applicable NSPS (40 CFR 60.11(d)) and MACT standards or other applicable Federal or State programs.

TCEQ concluded that separating the two control elements was an appropriate means of protecting smaller sources subject to the HECT from depending on market availability of allowances or facing enforcement action if all emissions from an exceptionally large release exhausted their HECT allowances. Additionally, this separation of the annual cap and the short-term limit establishes a clear procedure for handling emissions during non-routine events. We believe the annual cap in conjunction with the short-term limit will achieve the goals of the attainment demonstration as indicated by TCEQ's modeling analysis. Please see our action and TSD on the attainment demonstration (EPA–R06–OAR–2005–TX–0018) for further explanation.

An additional advantage of separating these two control elements is that counting all emissions toward the annual cap could result in a loss of the incentives and cost-effectiveness associated with cap- and trade programs. In EPA's experience with cap and trade programs, some sources will always overcontrol emissions, which they in turn will most likely sell to other sources that cannot achieve such reductions without making greater expenditures. Through the functioning of the cap and trade market, reductions will tend to be made by the sources able to make them in the most cost-effective manner, and therefore the program will tend to promote the achievement of the maximum amount of emission reductions per dollar of resources expended.

In the HGB area, however, an additional important factor is present, in that a significant number of sources have the potential for large emissions events or ''spikes.'' In such circumstances, if a cap and trade program counts all emissions towards the cap, then overcontrolling sources will tend to retain all of their reductions as insurance against the possibility of consuming their entire annual allowance through an unforeseeable emissions event. Therefore, eligible reductions will not be traded as allowances, which will impair the market function of the cap and trade program and thereby weaken its tendency to cost effectively achieve emission reductions. The two-part structure of the Texas program offsets this disadvantage.

*Comment 7:* EPA's analysis suggests that the HECT program could lead to results that flout the intent of an EIP. An example would be a company that invests in efforts to dramatically reduce its routine HRVOC emissions below its annual cap, but fails to invest in efforts to reduce its risk of a major upset. This company could be the largest single emitter of HRVOCs in a year while also being a major seller of HECT allowances.

*Response to Comment 7:* EPA disagrees. The proposed HECT rule, at 70 FR 58143, describes EPA's analysis and our determination that, on balance, the HECT program is approvable. The intent of the HECT is to reduce routine emissions of HRVOCs. The scenario presented by the commenters actually supports the design of the HECT, in that the routine HRVOC emissions have been controlled because the company has been able to ''dramatically reduce'' these emissions below the facility's annual allocation level. The emissions associated with a major upset that are exempted from the annual cap (emissions above 1200 lb/hr) would be violations of the short-term emissions limit and subject to enforcement. We believe that this two-part approach to control of HRVOC emissions recognizes the uniqueness of the HGB nonattainment area and is appropriate to demonstrate attainment. Additional information on our analysis of the attainment demonstration is available in the rulemaking docket for this action (EPA–R06–OAR–2005–TX–0018).

As noted in our proposed approval, the exemption of hourly limit exceedances from the annual cap is not provided for in EPA's EIP Guidance, but the scenario provided by the commenters is unlikely to occur. Based on the final HECT allocation scheme updated March 20, 2006, the largest allocation is 441.9 tons. This allocation is approximately equivalent to 100.9 lb/hr, assuming the facility will operate with the allocation as an hourly average to represent routine emissions. Therefore, the largest HECT allocation will be approximately twelve times smaller than the 1200 lb/hr short-term limit. For every other source under the HECT, the disparity would be even greater. Based on this difference between the short-term limit and presumed routine emissions levels, no source would be able to operate at the hourly limit for an extended period of time without pushing its emissions total close to or above the annual cap—in which case it would not be able to sell allowances. Therefore, as discussed in our proposal, only truly non-routine emissions will exceed the hourly limit. Such exceedances are subject to enforcement as a violation of the 1200 lb/hr limit. Thus, two factors militate against the existence of the commenters' hypothetical high-emitting allowance seller: (1) The improbability of a source operating for long above the hourly limit without consuming a large part of its annual allocation, and (2) the fact that each time it did exceed the hourly limit, it could be subject to enforcement. Because we find that the result cited by the commenters is unlikely to occur, we continue to believe that the relative advantages and disadvantages of the structure of the HECT program support approval.

Also, while the structure of the HECT and the HRVOC rules anticipates that emission events will not be completely eradicated, EPA believes that in combination these programs provide sufficient disincentives that sources will sufficiently reduce the frequency and magnitude of large emission events such that emission events would not be expected to impact peak ozone levels. The University of Texas report ''Variable Industrial VOC Emissions and Their Impact on Ozone Formation in the Houston Galveston Area,'' April 16, 2004, estimated from historic

information that it is probable that at least one event will occur annually at a time and location to impact peak ozone. TCEQ determined, and EPA concurs, that it is therefore necessary to reduce the frequency of emission events so that emission events do not interfere with attainment of the 1-hour NAAQS, which only allows an average of one exceedance per year. Based on this study, we believe the hourly emission limit will achieve this goal. Because facilities would be expected to take action to avoid emission events exceeding the short-term limit of 1200 lbs/hr, we anticipate that the frequency of such events in the future will be lower than in the past and on average less than 1 event per year impacting peak ozone should be expected. The University of Texas study also supports our belief that even if the scenario presented by the commenters does actually occur, it is unlikely to impact attainment of the 1-hour ozone NAAQS.

*Comment 8:* If EPA approves the exclusion of emissions above the short-term cap from the annual cap, it should at least condition its approval on the TCEQ adopting a requirement that a company may not be a net seller of HECT allowances in the same year that it makes use of the exclusion.

*Response to Comment 8:* EPA disagrees. The condition described by the commenters is not necessary to ensure that the HECT functions properly. As described in our response to Comment 7 above, it is unlikely that a source would be a net seller of allowances and also exempt emissions above the hourly limit from its annual cap.

*Comment 9:* If EPA approves the HECT program as adopted by the TCEQ, EPA should commit to independently auditing the program annually during its first several years to determine whether implementation of the rule meets EIP Guidance.

*Response to Comment 9:* EPA disagrees that an independent audit of the HECT is necessary. As proposed by EPA (70 FR 58138), the HECT does have a formal audit provision that provides sufficient oversight to identify and address potential areas of concern. The audit provision is in section 101.403(a) of the HECT rules and requires TCEQ to conduct an audit every three years, beginning in 2007. The audit will evaluate the impact of the program on the State's ozone attainment demonstration, the availability and cost of allowances, compliance by the participants, and any other elements the TCEQ Executive Director may choose to include. The TCEQ Executive Director will recommend measures to remedy any problems identified during the audit, including discontinuing allowances trading. The audit data and results must be completed and submitted to EPA and made available for public inspection within six months from the beginning of the audit. EPA will receive the audit reports and will have the opportunity through the SIP process to require any necessary changes. Additionally, facilities that do not have enough allowances to cover their actual HRVOC emissions during a control period will have their allowances for the next control period reduced by an amount equal to the emissions exceeding the allowances, plus an additional ten percent of the exceedance. Also, the TCEQ Executive Director has the authority to initiate enforcement actions if necessary to correct violations of the HECT program.

The HECT audit provisions described above are consistent with EPA's expectations for evaluating the results of an economic incentive program (EIP), as outlined in section 5.3(b) of the EIP Guidance. Section 5.3(b) explains that an appropriate schedule for program evaluations is at least every three years, which coincides with other periodic reporting requirements such as those applicable to emission inventory requirements required by the CAA. EPA believes that the triennial HECT audit schedule and the required annual report (section 101.403(b)) that summarizes all HECT trades completed in the most recent control period will be sufficient to ensure the HECT does not jeopardize the HGB area's attainment strategy.

EPA's response to Texas Industry Project (TIP) comments made on November 4, 2005, is as follows:

*Comment:* TIP supports EPA's proposed approval of the HECT program and urges EPA to finalize its approval as soon as practicable.

*Response:* EPA acknowledges the support of TIP for our approval of the HECT program.

EPA's response to comments made by the BCCA Appeal Group (BCCAAG) on November 4, 2005, is as follows:

*Comment 1:* BCCAAG supports EPA's proposed approval of the HECT program and urges EPA to finalize its approval as soon as practicable.

*Comment 2:* BCCAAG supports the establishment of a separate short-term limit on HRVOC emissions, and the exclusion of short-term limit exceedances from the HECT program.

*Response to Comment 1 and 2:* EPA acknowledges the support of BCCAAG for our approval of the HECT program and the specific feature of the HECT that allows exceedances of the short-term limit to be exempt from the HECT.

We note that BCCAAG also submitted a set of comments on November 4, 2005, that were specific to our proposed action on the revisions to the HGB attainment demonstration. On page 8 of this submittal, the commenter references the HECT, but gives no additional information relevant to our rulemaking on the HECT. We are addressing this separate BCCAAG submittal in our action on the attainment demonstration (EPA–R06–2005–TX–0018).

## IV. What does Federal approval of a State regulation mean to me?

Enforcement of the State regulation before and after it is incorporated into the federally approved SIP is primarily a State function. However, once the regulation is federally approved, EPA and the public may take enforcement action against violators of these regulations.

## V. 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, 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, 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 (15 U.S.C. 272 note) 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. 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 6, 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 40 CFR Part 52**

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

Dated: August 24, 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 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, by adding in numerical order a new centered heading ''Division 6—Highly-Reactive Volatile Organic Compound Emissions Cap and Trade Program'' followed by new entries for sections 101.390, 101.391, 101.392, 101.393, 101.394, 101.396, 101.399, 101.400, 101.401 and 101.403.

The additions read as follows:

**§ 52.2270 Identification of plan.**

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(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

| State citation | Title/subject | State approval/ submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Chapter 101—General Air Quality Rules** | | | | |
| * | * | * | * | * |
| **Subchapter H—Emissions Banking and Trading** | | | | |
| * | * | * | * | * |
| **Division 6—Highly-Reactive Volatile Organic Compound Emissions Cap and Trade Program** | | | | |
| Section 101.390 | Definitions | 12/01/04 | [Insert date of *FR* publication] [Insert *FR* page number where document begins]. | |
| Section 101.391 | Applicability | 12/01/04 | [Insert date of *FR* publication] [Insert *FR* page number where document begins]. | |
| Section 101.392 | Exemptions | 12/01/04 | [Insert date of *FR* publication] [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 101.393 | General provisions | 12/01/04 | [Insert date of *FR* publication] [Insert *FR* page number where document begins]. | |
| Section 101.394 | Allocation of allowances | 12/01/04 | [Insert date of *FR* publication] [Insert *FR* page number where document begins]. | |
| Section 101.396 | Allowance deductions | 12/01/04 | [Insert date of *FR* publication] [Insert *FR* page number where document begins]. | |
| Section 101.399 | Allowance Banking and Trading | 12/01/04 | [Insert date of *FR* publication] [Insert *FR* page number where document begins]. | |
| Section 101.400 | Reporting | 12/01/04 | [Insert date of *FR* publication] [Insert *FR* page number where document begins]. | |
| Section 101.401 | Level of activity certification | 2/01/04 | [Insert date of *FR* publication] [Insert *FR* page number where document begins]. | |
| Section 101.403 | Program audits and reports | 12/01/04 | [Insert date of *FR* publication] [Insert *FR* page number where document begins]. | |
| * | * | * | * | * |

[FR Doc. 06–7410 Filed 9–5–06; 8:45 am]
**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R06–OAR–2005–TX–0023; FRL–8216–4]**

### Approval and Promulgation of State Implementation Plans; Texas; Revisions for the Mass Emissions Cap and Trade Program for the Houston/ Galveston/Brazoria Ozone Nonattainment Area

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving revisions to the Texas State Implementation Plan (SIP) concerning the Mass Emissions Cap and Trade (MECT) program for emissions of nitrogen oxides ($NO_X$) in the Houston/Galveston/Brazoria (HGB) ozone nonattainment area. Additionally, EPA is approving several subsections of Chapter 116 of the Texas Administrative Code (TAC) (Control of Air Pollution by Permits for New Construction or Modification) that provide cross-references to the MECT program. EPA is approving these revisions in accordance with the requirements of the Federal Clean Air Act (CAA).

**DATES:** This rule is effective on October 6, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2005–TX–0023. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Permitting Section (6PD–R), 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 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 related to this SIP revision, and which is part of the EPA docket, 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.