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**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2011-0079; FRL- 9932-51-Region 6]**

**Approval and Promulgation of Implementation Plans; Texas; Revision to Control Volatile Organic Compound Emissions from Storage Tanks and Transport Vessels**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a Texas State Implementation Plan (SIP) revision for control of volatile organic compound (VOC) emissions from degassing of storage tanks, transport vessels and marine vessels. The revision reformats the existing requirement to comply with current rule writing standards, adds additional control options for owner/operators to use when complying, clarifies the monitoring and testing requirements of the rule, and makes non-substantive changes to VOC control provisions that apply in the Beaumont-Port Arthur (BPA) nonattainment area (Hardin, Jefferson and Orange Counties), four counties in the Dallas-Fort Worth (DFW) nonattainment area (Collin, Dallas, Denton and Tarrant Counties), El Paso County, and the Houston-Galveston-Brazoria (HGB)

nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties).

The EPA is also making a ministerial correction to the Code of Federal Regulations (CFR) to accurately reflect approved SIP revisions that pertain to Stage II control of VOCs from gasoline dispensing facilities in Texas.

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

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2011-0079. 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.*, 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 EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Todd, (214) 665-2156, [todd.robert@epa.gov](mailto:todd.robert@epa.gov). To inspect the hard copy materials, please contact Mr. Todd or Mr. Bill Deese (214) 665-7253.

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

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**I. Background**

The background for this action is discussed in detail in our May 13, 2015 direct final rule and proposal (80 FR 27251 and 80 FR 27275). In the direct final rule we approved a SIP submission revising the rules for controlling VOC emissions from degassing of storage tanks, transport vessels and marine vessels. The Texas rule revisions were adopted by the state on January 26, 2011 and submitted to us on February 18, 2011. The revisions submitted by the Texas Commission on Environmental Quality (TCEQ) apply to Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant and Waller Counties.

Our May 13, 2015 rule and proposal stated that if any relevant adverse comments were received by the end of the public comment period on June 12, 2015, the direct final rule would be withdrawn and we would respond to the comments in a subsequent final action. Relevant adverse comments were received during the comment period, and the direct final rule was

withdrawn on June 30, 2015 (80 FR 37161). Our May 13, 2015 proposal provides the basis for this final action.

Also, on March 17, 2014 we approved revisions to the Texas SIP pertaining to Stage II control of VOCs from gasoline stations (79 FR 14611). Included in the approved revisions was removal of sections 115.247 and 115.249 from the TX SIP. In that document, however, we did not update the CFR to show that 30 TAC 115.247 and 115.249 were removed from the SIP. We are using the opportunity of this final rule to correct this oversight.

We received comments on our May 13, 2015 proposal from two commenters. Our response to the comments are below.

## **II. Response to Comments**

*Comment:* The first commenter stated it would be impractical, and possibly unreasonable, to require industry to comply with the state regulations unless the state took the needs of individual sources into account and helped them to comply.

*Response:* The commenter fails to specify how and why the submitted revisions would be impractical. In addition, these revisions merely modify and clarify existing rules which have been implemented for several years. Requirements to control degassing emissions, for example, low-leaking tank fittings on some control options, monitoring control effectiveness and reporting compliance from degassing operations were first implemented in HGB and BPA (62 FR 27964, May 22, 1997). In DFW and El Paso County, these rules were adopted as contingency measures under the 1-hour ozone standard (62 FR 27964). The Texas Commission on Environmental Quality has been successfully implementing these degassing regulations in Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, and Waller

Counties for several years and we haven't received any information that supports the notion that compliance is overly burdensome in these counties. There is no documented evidence of owner/operators of marine vessels finding these rules impractical. The revisions also make changes to provide additional flexibility for affected owners and operators allowing for the use of alternative control options such as the use of a recirculation system, with appropriate monitoring to assure the effectiveness of the system or an option that allows the operator to demonstrate compliance by limiting the VOC concentration at the outlet of a control device to less than 500 parts per million (by volume).

Sources in Collin, Dallas, Denton, El Paso and Tarrant Counties have been aware of the possibility these regulations might affect them for some years and the state has been implementing them in Collin, Dallas, Denton and Tarrant counties since February 18, 2011. We have not received any indication that sources in these areas are not able to comply with the degassing requirements. TCEQ also submitted these revisions for public comment and notice so the public had ample opportunity to comment on these revisions during the state's rulemaking process.

*Comment:* The second commenter stated we could not approve the degassing rules as reasonably achievable control technology (RACT) for Marine Vessel Loading Operations subject to the 40 CFR part 63, subpart Y, Marine Vessel Loading Maximum Available Control Technology (MACT) standard because that federal rule defines RACT for this source category more stringently than the Texas regulations. RACT in part 63, subpart Y is defined as 95% control of volatile organic compound (VOC) emissions when using a recovery device and 98% control when using a combustion device. The RACT levels we previously approved in Texas's affected counties is 90% control of VOC emissions.

*Response:* The federal regulation the commenter cites, 40 CFR part 63, subpart Y, is not applicable to degassing operations. The Marine Vessel Loading Operations MACT standard does contain a RACT requirement defining the VOC control efficiencies that affected sources must achieve while performing marine loading operations. 40 CFR 63.561 defines marine loading operations as any operation under which a commodity is bulk loaded onto a marine tank vessel from a terminal, which may include the loading of multiple marine tank vessels during one loading operation. However, the submitted revisions do not address any operations which can be described as operations in which a commodity is bulk loaded onto a marine tank vessel from a terminal, or may include the loading of multiple marine tank vessels during one loading operation. The submitted revision only addresses operations that occur during the degassing, cleaning or vessel maintenance activities covered by the Texas regulation.<sup>1</sup> The proposed revision, 30 TAC Sec. 115.540, defines degassing as the process of removing volatile organic vapor from a storage tank, transport vessel, or marine vessel. Degassing operations do not involve loading of a bulk commodity and do not include marine loading operations as defined by 40 CFR 63.561. Therefore, subpart Y is not applicable to the operations or activity covered by the submitted revisions. Therefore, the commenters concern that RACT as defined in the 40 CFR part 63, subpart Y won't be met in the Texas SIP action is unfounded. Inclusion of the Texas degassing rule in the Texas SIP is appropriate under these circumstances and effectively reduces VOC emissions from these sources.

### **III. Final Action**

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<sup>1</sup> 40 CFR 63.562(c) states the RACT level of control applies to vapor tight marine vessel with a vapor collection system designed to collect VOC vapors displaced from marine tank vessels during loading operations. 40 CFR 63.531 defines marine tank vessel loading operation as any operation under which a commodity is bulk loaded onto a marine tank vessel from a terminal.

We are approving a Texas SIP revision for control of VOC emissions from storage tank, transport vessel and marine vessel degassing operations adopted on January 26, 2011, and submitted on February 18, 2011. Specifically, we are approving revisions to 30 TAC 115 at sections 115.540 -115.547 and 115.549. The revisions (1) reformat the existing rule to simplify and clarify rule requirements; (2) modify VOC control requirements in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant and Waller Counties; (3) make changes to provide additional flexibility for affected owners and operators allowing for the use of alternative control options; and (4) make non-substantive changes to VOC control provisions that apply in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant and Waller Counties.

We are also making a ministerial correction to the table in 40 CFR 52.2270(c) to accurately reflect the revisions to Stage II control of VOCs approved into the Texas SIP on March 17, 2014 (79 FR 14611).

#### **IV. Incorporation by Reference**

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

#### **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);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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 Clean Air Act; and
- Does not provide the 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 the 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. The 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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 9, 2015.

**Ron Curry,**

*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(c), the table titled “EPA APPROVED REGULATIONS IN THE TEXAS SIP” is amended by removing the entries for Sections 115.247 and 115.249, adding an entry for Section 115.540, and revising the entries for sections 115.541 through 115.547 and 115.549 to 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
* * * * *				
<b>Chapter 115 (Reg 5) – Control of Air Pollution From Volatile Organic Compounds</b>				
* * * * *				
<b>Subchapter F – Miscellaneous Industrial Sources</b>				
* * * * *				
<b>Division 3: Degassing or Cleaning of Stationary, Marine, and Transport Vessels</b>				
Section 115.540	Applicability and Definitions	1/26/2011	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	

Section 115.541	Emission Specifications	1/26/2011	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
Section 115.542	Control Requirements	1/26/2011	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
Section 115.543	Alternate control Requirements	1/26/2011	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
Section 115.544	Inspection, Monitoring, and Testing Requirements	1/26/2011	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
Section 115.545	Approved Test Methods	1/26/2011	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
Section 115.546	Recordkeeping and Notification Requirements	1/26/2011	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
Section 115.547	Exemptions	1/26/2011	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
Section 115.549	Compliance Schedules	1/26/2011	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
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