

affirmative defense provisions for source owners and operators for excess emissions during periods of startup and shutdown. The affirmative defense provisions are contained in section II.J. As indicated in 40 CFR 52.320(c)(109), EPA approved the affirmative defense provisions contained in sections II.J.1 through II.J.4 of the Common Provisions regulation, adopted August 16, 2001 and effective September 30, 2001. Section II.J.5 of the Common Provisions regulation, adopted August 16, 2001 and effective September 30, 2001, is disapproved.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2005-TX-0003; FRL-8034-7]

Approval and Promulgation of State Implementation Plans; Texas; Revision to the Rate of Progress Plan for the Beaumont/Port Arthur Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Texas State Implementation Plan (SIP) Post-1996 Rate of Progress (ROP) Plan, the 1990 Base Year Inventory, and the Motor Vehicle Emissions Budgets (MVEB) established by the ROP Plan, for the Beaumont/Port Arthur (BPA) ozone nonattainment area submitted November 16, 2004. The intended effect of this action is to approve revisions submitted by the State of Texas to satisfy the reasonable further progress requirements for 1-hour ozone nonattainment areas classified as serious and demonstrate further progress in reducing ozone precursors. We are approving these revisions in accordance with the requirements of the Federal Clean Air Act (CAA).

DATES: This rule is effective on April 24, 2006 without further notice, unless EPA receives relevant adverse comment by March 24, 2006. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2005-TX-0003, by one of the following methods:

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

- EPA Region 6 "Contact Us" Web site: <http://epa.gov/region6/r6coment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

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

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

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

- Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2005-TX-0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of

special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30am and 4:30pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

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

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone 214-665-6645, young.carl@epa.gov.

SUPPLEMENTARY INFORMATION: What Action Are We Taking?

We are approving revisions to the BPA area post-1996 ROP Plan for the 1997-1999, 2000-2002 and 2003-2005 time periods submitted in a letter dated November 16, 2004. The post-1996 ROP plan is designed to achieve an additional 9 percent reduction in emissions between 1996 and 1999, a further 9 percent reduction between 1999 and 2002, and another 9 percent reduction between 2002 and 2005. We are also approving revisions to the 1990 base year inventory and the ROP Plan's associated Motor Vehicle Emissions Budgets (MVEB) for 1999, 2002, and 2005.

Why Are These Revisions Necessary?

On March 30, 2004, EPA issued a final action in the **Federal Register** reclassifying BPA from moderate one-hour ozone nonattainment to serious (69 FR 16483). With this new classification came several requirements including a requirement to provide a revision to the SIP showing the CAA section 182(c)(2) rate of progress requirements would be met for 1999, 2002, and 2005.

We released a new MOBILE6 model on January 29, 2002. (See 67 FR at 4254). Using MOBILE6 to calculate the 1999, 2002, and 2005 ROP target levels requires a revision to the 1990 base year inventory, which is the planning base line from which the ROP targets are calculated. Texas updated the 1990 base year inventory for the BPA area to reflect the use of MOBILE6. This affected the base year on-road mobile source inventory as well as the projected emission reductions from mobile source control programs. Texas also made a number of other changes as a result of updated information.

What Are the Clean Air Act's Rate of Progress Requirements?

Section 182(c)(2) of the CAA requires each State to submit for each serious and above ozone nonattainment area a SIP revision, which describes how the area will achieve an actual volatile organic compound (VOC) emission reduction from the baseline emissions of at least 3 percent of baseline emissions per year averaged over each consecutive 3-year period beginning 6 years after enactment (*i.e.*, November 15, 1996) until the area's attainment date. The CAA does not allow States to take credit

for emission reductions due to Federal Motor Vehicle Controls adopted prior to 1990 or corrections to reasonably available control technology or vehicle inspection and maintenance programs. Section 182(c)(2)(C) explains the conditions under which reductions of oxides of nitrogen (NO_x) may be substituted for reductions in VOC emissions for post 1996 ROP plans.

Why Control Volatile Organic Compounds and Oxides of Nitrogen?

VOCs participate in chemical reactions with oxides of nitrogen (NO_x) and oxygen in the atmosphere in the presence of sunlight to form ozone, a key component of urban smog. Inhaling even low levels of ozone can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It can also worsen bronchitis, asthma and reduce lung capacity.

EPA has established National Ambient Air Quality Standards (NAAQS) for ozone. The previously adopted standard of 0.12 ppm averaged over a 1 hour period has been phased out and replaced with a new standard of 0.08 ppm averaged over a 8 hour period. The 1-hour standard was revoked on June 15, 2005.

Areas that do not meet a NAAQS are subject to nonattainment requirements of the CAA. Air quality in BPA does not meet either the 1-hour or the 8-hour NAAQS for ozone. As such, the area is subject to the ROP requirements of section 182 of the CAA. The revised ROP plan approved today was developed in response to a 1-hour ozone requirement. Under the anti-backsliding provisions of the Phase I ozone

implementation rule, published on April 30, 2004 (69 FR 69 FR 23951), these rate of progress requirements must remain in effect.

How Has Texas Demonstrated Compliance With Rate of Progress Requirements?

Table 1 and Table 2 show the target levels and the projected controlled VOC and NO_x emissions for each of the milestone years in the SIP.

The target levels are calculated by subtracting the needed percentage reductions for each ROP milestone year and any non-creditable reductions from the 1990 base year levels. Projected future-year emissions for 2005 were developed by projecting from the State's 2002 Emission Inventory—actual emission inventory estimates reported for 2002. Emissions for 1999 and 2002 are based on the actual reported inventory for those years. The projections for 2005 were determined based on growth estimates using EPA approved methodologies and imposition of Federal and SIP-approved state enforceable controls. The two tables demonstrate that estimated emissions in 1999 and 2002 and projected emissions for 2005 are well below the target levels for each of the milestone years. In other words, the Texas Commission on Environmental Quality (TCEQ) has shown that there will be more emission reductions than are required to meet each milestone's target level. For a complete discussion of EPA's evaluation of TCEQ's calculation of target levels and emission projections, see the technical support document for this action.

TABLE 1.—ACTUAL AND PROJECTED NO_x EMISSIONS

[Tons/day]

Category/year	1990	1999	2002	2005
Projected Emissions	313.13	225.21	193.65	177.1
Target Level	NA	303.37	270.02	234.82

The reductions in projected emissions shown in Table 1 result from a variety of measures including post-1990 federal motor vehicle control programs, NO_x reasonably available control technology,

and controls on lean burn engines and additional NO_x controls shown to be needed to achieve attainment.

It is worth noting that the 2005 projections above do not include all of

the emission reductions expected in the BPA area including reductions from the Texas Emission Reduction Program and some of the industrial controls required to be implemented after 2002.

TABLE 2.—ACTUAL AND PROJECTED VOC INVENTORIES

[Tons/day]

Category/year	1990	1999	2002	2005
Total	320.56	150.02	126.22	119.55
Target	NA	230.40	228.57	227.02

As can be seen in Table 2, the VOC emission reductions were largely realized between 1990 and 1999. These VOC reductions result from post-1990 federal motor vehicle emission control programs and a variety of point source measures implemented as part of the area's ROP plan for the 1990-1996 time

period which was approved February 10, 1998 (63 FR 6659). In addition, the State has quantified the reductions from the institution of Maximum Available Control Technology (MACT) standards under 40 CFR Part 63 such as the Hazardous Organic National Emission Standard for Hazardous Air Pollutants.

What Are the Revisions to the 1990 Base Year Inventory?

Table 3 summarizes the changes to the approved 1990 base year inventory. For a full discussion of EPA's evaluation, see the technical support document for this action.

TABLE 3.—1990 RATE-OF-PROGRESS BASE YEAR EMISSIONS INVENTORY
[Tons/day]

Source type	Base year inventory			
	VOC		NO _x	
	Old	New	Old	New
Point Area	245.35	245.54	221.01	221.01
On-road Mobile	30.63	24.56	1.44	16.73
Non-road Mobile	19.11	36.99	41.09	54.94
	18.44	13.47	60.72	20.63
Total	313.53	320.56	324.26	313.31

The columns denoted as old were the 1990 base year emission inventories approved February 10, 1998 (63 FR 6659). The changes to the inventory result from the use of the more recent version of EPA's model for estimating on-road mobile source emissions, MOBILE6, the more recent emissions model for emissions from off-road mobile sources, NONROAD, and several area-specific studies of activity levels. Appendix 7 in the submitted Plan includes various studies of off-road emissions categories. In particular, TCEQ has included area-specific studies of aircraft, locomotive, ship and construction emissions.

What Are the Motor Vehicle Emissions Budgets Established in the Plan?

Table 4 documents the motor vehicle emissions budgets that have been established by this post-1996 ROP Plan revision. A motor vehicle emission budget is that portion of the total allowable emissions defined in the SIP revision allocated to on-road mobile sources for a certain date for meeting the purpose of the SIP, in this case reasonable further progress towards attainment of the NAAQS. EPA's conformity rule (40 CFR part 51, subpart T and part 93, subpart A) requires that transportation plans, programs and projects in nonattainment or maintenance areas conform to the SIP. The motor vehicle emissions budget is one mechanism EPA has identified for demonstrating conformity. Upon the effective date of this SIP approval, all future transportation improvement programs and long range transportation plans for the Beaumont/Port Arthur area will have to show conformity to the

budgets in this plan; previous budgets approved or found adequate will no longer be applicable.

TABLE 4.—SIP ROP MOTOR VEHICLE EMISSIONS BUDGETS
[Tons per day]

Year	NO _x	VOC
1999	57.17	20.52
2002	49.56	17.21
2005	33.97	12.59

Final Action

The EPA is approving the aforementioned changes to the Texas SIP because the revisions are consistent with the CAA and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the EPA views this as a non-controversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective April 24, 2006 without further notice, unless EPA receives relevant adverse comment by March 24, 2006.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should

do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 24, 2006, and no further action will be taken on the proposed rule.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 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: February 6, 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 second table in § 52.2270(e) entitled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP" is amended by adding two new entries to the end of the table for "Post 1996 Rate of Progress Plan" and for "Revisions to the 1990 Base Year Inventory", both for the Beaumont/Port Arthur, TX area. The additions read as follows: § 52.2270 Identification of plan

* * * * *
(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
* Post 1996 Rate of Progress Plan.	* Beaumont/Port Arthur, TX	* 11/16/04	* February 22, 2006.	* *
* Revisions to the 1990 Base Year Inventory.	* Beaumont/Port Arthur, TX	* 11/16/04	* February 22, 2006.	* *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2005-0170; FRL-8035-2]

Regulation of Fuels and Fuel Additives: Removal of Reformulated Gasoline Oxygen Content Requirement for California Gasoline and Revision of Commingling Prohibition To Address Non-Oxygenated Reformulated Gasoline in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In the Energy Policy Act of 2005 (Energy Act), Congress removed the oxygen content requirement for reformulated gasoline (RFG) in Section 211(k) of the Clean Air Act (CAA). The Energy Act specified that this change was to be immediately effective in California, and that it would be effective 270 days after enactment for the rest of the country. This direct final rule amends the fuels regulations to remove the oxygen content requirement for RFG for gasoline produced and sold for use in California, thereby making the fuels