

■ 2. Add temporary § 100.120 to read as follows:

**§ 100.120 Fran Schnarr Open Water Championships, Huntington Bay, New York.**

(a) *Regulated area.* All navigable waters of Huntington Bay, NY within 100 yards of the swim race course consisting of the following points: Start/Finish at approximate position 40°54'25.8" N 073°24'28.8" N, East Turn at approximate position 40°54'45" N 073°23'36.6" N and a West Turn at approximate position 40°54'31.2" N 073°25'21" N.

(b) *Definitions.* The following definition applies to this section:

*Designated on-scene patrol personnel* means any commissioned, warrant or petty officer of the U.S. Coast Guard operating Coast Guard vessels who has been authorized to act on the behalf of the Captain of the Port Long Island Sound.

(c) *Special local regulations.* (1) The general regulations contained in 33 CFR § 100.35 and § 100.40 apply.

(2) In accordance with the general regulations in § 100.35 of this part, no person or vessel may enter, transit, or remain within the regulated area during the effective period of the regulation unless they are officially participating in the Fran Schnarr Open Water Swim event or are otherwise authorized by the Captain of the Port Long Island Sound or the designated on-scene patrol personnel.

(3) All persons and vessels must comply with the instructions from the Coast Guard Captain of the Port Long Island Sound or the designated on-scene patrol personnel. The designated on-scene patrol personnel may delay, modify, or cancel the swim event as conditions or circumstances require.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(5) Persons and vessels desiring to enter the regulated area may request permission to enter from the designated on-scene patrol personnel on VHF-16 or from the Captain of the Port Long Island Sound via phone at (203) 468-4401.

(d) *Effective Period.* This rule is in effect from 7:15 a.m. to 11:30 a.m. on July 12th, 2009. Notification of the swim event and enforcement of the special local regulation will be made via separate marine broadcasts and broadcast notice to mariners.

Dated: June 19, 2009.

**Daniel A. Ronan,**

*Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.*

[FR Doc. E9-16307 Filed 7-9-09; 8:45 am]

BILLING CODE 4910-15-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG-2009-0546]

**Drawbridge Operation Regulations; Annisquam River and Blynman Canal, Gloucester, MA, Public Event**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Blynman (SR127) Bridge across the Blynman Canal at mile 0.0, at Gloucester, Massachusetts. This deviation is necessary to facilitate the 2009 Gloucester Triathlon. The deviation allows the bridge to remain in the closed position during this public event in the interest of public safety.

**DATES:** This deviation is effective from 9 a.m. through 11 a.m. on August 9, 2009.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG-2009-0546 and are available online at <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0546 in the docket ID box, pressing enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. John McDonald, Project Officer, First Coast Guard District, telephone (617) 223-8364, [john.w.mcdonald@uscg.mil](mailto:john.w.mcdonald@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:** The Blynman (SR127) Bridge, across the Blynman Canal at mile 0.0, at Gloucester, has a vertical clearance in the closed position of 7 feet at mean high water and 16 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.586.

The waterway supports both commercial and seasonal recreational vessel traffic.

Under this deviation the Blynman (SR127) Bridge may remain in the closed position from 9 a.m. through 11 a.m. on August 9, 2009, to facilitate a public event, the 2009 Gloucester Triathlon. Vessels that can pass under the closed draws may do so at any time.

This deviation is necessary for public safety, to facilitate vehicular traffic management during the 2009 Gloucester Triathlon.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 23, 2009.

**Gary Kassof,**

*Bridge Program Manager, First Coast Guard District.*

[FR Doc. E9-16395 Filed 7-9-09; 8:45 am]

BILLING CODE 4910-15-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R06-OAR-2005-TX-0005; FRL-8928-6]

**Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to the 1-Hour Ozone Plan for the Beaumont/Port Arthur Area: Control of Air Pollution From Volatile Organic Compounds, Nitrogen Compounds, and Reasonably Available Control Technology**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving part of two Beaumont-Port Arthur (BPA) State Implementation Plan (SIP) revisions that were submitted separately by the State of Texas on October 15, 2005. The revisions being approved pertain to volatile organic compound (VOC) control requirements for batch processing and ship building and ship repair, and also to Reasonably Available Control Technology (RACT) requirements, for the Beaumont/Port Arthur (BPA) 1-hour ozone serious nonattainment area. In today's action, EPA is approving: The State's changes to the batch process rules and the shipbuilding and ship repair rules that lower the threshold for affected sources of VOC emissions to the serious area requirements of 50 tons per year (tpy),

and the State's demonstration that the BPA area meets RACT requirements for sources of VOC and NO<sub>x</sub> emissions for the 1-hour ozone standard. These revisions meet statutory and regulatory requirements, and are consistent with EPA's guidance. The EPA is approving these revisions pursuant to section 110 and part D of the Federal Clean Air Act (the Act).

**DATES:** This direct final rule will be effective *September 8, 2009* without further notice, unless EPA receives relevant adverse comments by August 10, 2009. If EPA receives such comment, EPA will publish a timely withdrawal of the direct final rule 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-0005, 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/r6comment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

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

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

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

- *Hand or Courier Delivery:* Mr. Guy Donaldson, 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-0005. 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 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Ellen Belk, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-2164; fax number 214-665-7263; e-mail address [belk.ellen@epa.gov](mailto:belk.ellen@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

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**I. What Action Is EPA Taking?**

We are approving parts of two State Implementation Plan (SIP) revisions containing VOC controls submitted by the State of Texas pertaining to the BPA 1-hour ozone serious nonattainment area, as well as the State's demonstration that the BPA area meets RACT requirements for sources of VOC and NO<sub>x</sub> emissions for the 1-hour ozone standard. Specifically, the revisions to the batch process rules and shipbuilding and ship repair rules lower VOC emission exemption levels for batch process operations and shipbuilding and ship repair operations in the BPA area from 100 tpy to 50 tpy to reflect the classification status of the BPA area as serious under the 1-hour standard, revising sections 115.167, 115.169, 115.427, and 115.429 of Title 30 of the Texas Administrative Code, Chapter 115 (30 TAC 115). The SIP revisions being approved today also include a demonstration that the BPA area meets the RACT requirements for VOC and NO<sub>x</sub> for a serious 1-hour ozone nonattainment area. RACT is the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility. RACT requirements for ozone nonattainment areas can be found in section 182 of the Act. For its RACT demonstration, the State relies upon previously approved VOC and NO<sub>x</sub> SIP rules (e.g., 65 FR

64148, October 26, 2000), as well as the VOC rule changes for batch process and shipbuilding and ship repair being approved in this action. EPA is finding that the BPA 1-hour ozone serious nonattainment area meets the RACT requirements for VOCs and NO<sub>x</sub>.

**II. Control of VOC Emissions in Batch Processes and Shipbuilding and Ship Repair**

*1. What Has the State Submitted?*

This action addresses part of two Texas submittals for Control of VOCs. The first submittal, entitled “Concerning Revisions to 30 TAC Chapter 115 Control of Air Pollution from Volatile Organic Compounds” was adopted September 9, 2005, by the State of Texas and submitted to EPA for approval as a SIP revision on October 15, 2005. This submittal included the following: (1) Revising VOC control requirements for the following source categories in the BPA area to meet the serious area VOC RACT requirements: Shipbuilding and Ship Repair, and Batch Processes, and (2) removing a contingency measure requirement for controls for loading and unloading of VOC from marine vessels. In this action, EPA is addressing only the first of these components: changes to the rules for Shipbuilding and Ship Repair, and Batch Processes, in the BPA area. We will take action on the second component in a separate **Federal Register** later. We note that the BPA area currently meets RACT requirements to limit air emissions of VOC and hazardous air pollutants (HAP) from new and existing marine tank vessel loading operations (30 TAC 115.549). Today, we are approving the revised VOC rules as part of the Texas SIP. We also are finding that these revised VOC rules meet RACT for the

BPA serious 1-hour ozone nonattainment area.

The second submittal, “Concerning Revisions to the Attainment Demonstration for the Beaumont/Port Arthur Ozone Nonattainment Area” was also adopted September 9, 2005, by the State and submitted October 15, 2005, to EPA for approval as a SIP revision. This second submittal addressed four of the BPA area’s outstanding 1-hour ozone obligations: (1) Major source applicability for RACT, (2) Clean-Fuel Vehicle Programs, (3) Reasonably Available Control Measures (RACM), and (4) a contingency measure for marine vessel loading, and also provided a demonstration of attainment for the 1997 8-hour ozone standard and an associated motor vehicle emissions budget (MVEB). In this action, EPA is addressing only the first of these components, the State’s VOC and NO<sub>x</sub> RACT demonstration. We will take action upon the other components later in **Federal Register** notices. Today, we are finding that the NO<sub>x</sub> rules approved on October 26, 2000 (65 FR 64148) meet RACT and that the BPA area meets the 1-hour ozone serious area RACT requirements for VOC and NO<sub>x</sub>.

*2. What Are the Requirements of Texas’ Regulation for Control of VOCs?*

VOC control regulations for two source categories are being revised to increase the level of control required: batch process operations, and shipbuilding and repair operations. Today’s action will change the exemption levels in these two categories from 100 tpy to 50 tpy of VOC, so that all of the source categories in the BPA area have a threshold consistent with the threshold of 50 tpy or greater for serious 1-hour ozone nonattainment areas.

In 2004, the BPA area was reclassified from a moderate to a serious nonattainment area for the 1-hour ozone standard, which resulted in a change in the major source applicability definition from 100 tpy to 50 tpy. TCEQ staff reviewed the VOC point source inventory to determine whether all major sources were covered by VOC RACT rules and found that, with the exception of the batch process rules and the shipbuilding and ship repair rules, all other source categories were covered by a RACT SIP rule in the BPA area with a threshold consistent with the threshold of 50 tpy for serious 1-hour ozone nonattainment areas.

This rule will affect VOC-emitting facilities in the three counties in the BPA 1-hour ozone serious nonattainment area. Table 1 lists the affected Texas Counties:

**TABLE 1—COUNTIES AFFECTED BY THIS RULEMAKING**

Counties in BPA 1-hour ozone nonattainment area affected by this rulemaking
Hardin Jefferson Orange

Texas’ Chapter 115 regulations control VOC emissions for many categories of sources. In particular, this rulemaking affects VOC control requirements for the following source categories in the BPA area to meet the serious area VOC RACT requirements: Shipbuilding and Ship Repair [30 TAC 115.427(a)(3)(H) and 30 TAC 115.429(c)], and Batch Processes [30 TAC 115.167(1)(A) and 30 TAC 115.169(a) & (c)], which are shown in Table 2:

**TABLE 2—TEXAS ADMINISTRATIVE CODE (TAC) CHAPTER 115 SUBCHAPTERS AFFECTED BY THIS RULEMAKING**

Chapter 115 subchapter	Section
B General VOC Sources: Division 6 Batch Processes: Exemptions .....	115.167(1)(A). 115.169(a) and (c).
E Solvent-Using Processes: Division 2 Surface Coating Processes: Exemptions .....	115.427(a)(3)(H). 115.429(c).

To determine whether a specific facility in one of the above counties will be affected by one or more of the above revisions, see Texas’ associated rule revisions included in the docket.

*3. Why Is EPA Approving Texas’ Regulation for Control of VOCs?*

Section 182 of the Act requires that ozone nonattainment areas classified as moderate and above implement RACT on certain sources of VOCs and NO<sub>x</sub>. In

particular, States must adopt rules that implement RACT on sources covered by control techniques guidelines (CTGs) issued prior to the 1990 amendments to the Act, sources covered by CTGs issued after the 1990 amendments and major

sources of emissions not covered by a CTG.

On March 7, 1995, as part of our action approving VOC RACT requirements, we found that Texas had implemented VOC RACT in the BPA area for both (1) sources covered by a CTG issued prior to the 1990 amendments to the Act, and (2) major sources not covered by a CTG (44 FR 12438, March 7, 1995). Since that time, EPA has issued CTGs, and alternative control techniques (ACT) for additional source categories. As a result, EPA has approved further revisions as meeting VOC RACT for the BPA area, including the following: Aerospace Coatings are addressed in 66 FR 54688 (October 30, 2001); Batch Processes and Industrial Wastewater in 65 FR 79745 (December 20, 2000); Wood Furniture Coating Operations and Ship Building and Repair Operations in 64 FR 12759 (March 15, 1999); Plastic Parts Coatings, Reactor Processes and Distillation Operations Process in the SOCOMI, and Volatile Organic Liquid Storage in 64 FR 3841 (January 26, 1999). While CTGs and ACTs were issued for a few other categories, there are no major sources in those categories in the BPA area. Texas submitted, and EPA approved, negative declarations on these CTG source categories in 61 FR 55894 (October 30, 1996). On May 15, 2001, EPA found that the BPA area had met the VOC RACT requirements for moderate 1-hour ozone nonattainment areas (66 FR 26914).

In 2004, BPA was reclassified from moderate to serious. As a serious area, the major source threshold dropped from 100 tpy to 50 tpy. On September 9, 2005, the TCEQ adopted revisions to the SIP for the BPA 1-hour ozone nonattainment area. The SIP revisions were submitted to EPA on October 15, 2005; two parts of these revisions are being approved in today's action. One part of these revisions that is being approved in this action are the State's revised rules that lower the exemption level for control of VOC emissions from 100 tpy to 50 tpy for shipbuilding and ship repair and batch processes, thus making the rules more stringent. This is consistent with VOC RACT requirements for serious 1-hour nonattainment areas. Our approval of the revised Texas regulations will make them Federally enforceable and the revised SIP will meet the serious area VOC RACT requirements for these source categories in the BPA area.

EPA has reviewed the revisions for consistency with the requirements of the Act and Federal regulations, and evaluated the analysis provided by Texas for determining whether the BPA area meets VOC RACT requirements for

an area with a serious classification for the 1-hour ozone standard. The specific requirements and EPA's evaluation of these requirements are detailed in the TSD found in the electronic docket. Revisions to the Texas regulations for control of VOC (30 TAC Chapter 115, sections 115.167, 115.169, 115.427, and 115.429) are also included in the docket.

### III. Reasonably Available Control Technology (RACT) for the 1-hr Ozone BPA Area

On March 30, 2004, EPA reclassified the BPA area as a serious nonattainment area for the 1-hour ozone standard and required the State to submit a revised SIP meeting the serious area 1-hour ozone requirements including RACT for VOC and NO<sub>x</sub> emissions from major sources (69 FR 16483); this action became effective April 29, 2004.

Sections 172(c)(1) and 182 of the Act require areas that are classified as moderate or above for ozone nonattainment to adopt RACT requirements for sources that are subject to CTGs for VOC source categories issued by EPA and for "major sources" of VOCs and NO<sub>x</sub>, which are ozone precursors. Specifically, section 182(b)(2) of the Act requires States to adopt RACT for all major sources of VOC in ozone nonattainment areas; and, section 182(f) requires the RACT provisions for major stationary sources of NO<sub>x</sub>. Section 182(c) of the Act defines "major source" for serious areas as a source that has the potential to emit 50 tpy or more of NO<sub>x</sub>. RACT is defined 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 (44 FR 53762; September 17, 1979).

EPA published the 8-hour ozone designations and the Phase 1 Rule for implementing the 1997 8-hour ozone standard and the designations for the 8-hour ozone standard in the **Federal Register** (FR) on April 30, 2004 (69 FR 23858 and 69 FR 23951). The BPA area was designated nonattainment for this standard and classified as marginal, and included the following three counties: Hardin, Jefferson, and Orange (these three also constituted the 1-hour ozone nonattainment area). At the time of designation for the 1997 8-hour standard, BPA was a nonattainment area for the 1-hour ozone standard and had several outstanding 1-hour ozone obligations, including the area did not have approved serious area RACT requirements for VOC and NO<sub>x</sub> emissions.

The Phase 1 Rule provided that 1-hour ozone nonattainment areas were

required to adopt and implement "applicable requirements" according to the area's classification under the 1-hour ozone standard (see 40 CFR 51.905(a)(i)). The BPA area was classified as a serious nonattainment area at the time of the 8-hour designation and an outstanding "applicable requirement" for the BPA area is serious area RACT for VOC and NO<sub>x</sub>. In the three counties which comprise the 1-hour ozone nonattainment area (Hardin, Jefferson and Orange), Texas previously adopted rules to address VOC and NO<sub>x</sub> RACT requirements for all major sources at the moderate area major source emissions threshold of 100 tons per year (tpy) or greater. The reclassification of the BPA area from moderate to serious for the 1-hour ozone standard, on March 30, 2004 (69 FR 16483), required Texas to ensure that RACT was in place on all major sources of 50 tpy or greater of VOC and NO<sub>x</sub> emissions.

EPA reviewed the SIP rules, the revised VOC rules being approved today, and the State's RACT demonstration to determine whether RACT for VOCs and NO<sub>x</sub> has been adopted in the BPA area as required to meet 1-hour ozone standard requirements. EPA is finding that the RACT requirements for VOCs and NO<sub>x</sub> in the BPA area meet the 1-hour ozone standard serious area requirements. RACT for VOCs and RACT for NO<sub>x</sub> are discussed successively below.

#### 1. VOC RACT

In the three counties which comprise the 1-hour ozone nonattainment area (Hardin, Jefferson and Orange), Texas previously adopted rules to address RACT requirements for all VOC source categories covered by EPA CTGs, and to address VOC major sources not covered by CTGs at the moderate area major source emissions threshold of 100 tons per year (tpy). A CTG provides information on the available controls for a VOC source category and provides a "presumptive norm" for VOC RACT. EPA approved these rules as meeting VOC RACT for a moderate 1-hour ozone nonattainment area in a series of actions.

On March 7, 1995, as part of our action approving VOC requirements, EPA found that Texas had implemented RACT in the BPA area for both (1) sources covered by a CTG issued prior to the 1990 amendments to the Act, and (2) major sources not covered by a CTG (60 FR 12438). On October 30, 1996, EPA approved SIP Revisions Regarding Negative Declarations for Source Categories Subject to RACT for Louisiana and Texas (61 FR 55984). For

the Beaumont/Port Arthur region, negative declarations were approved for the following categories: clean-up solvents, aerospace coatings, shipbuilding and repair, wood furniture, plastic part coatings—business machines, plastic part coatings—others, autobody refinishing, and offset lithography. On May 22, 1997, EPA granted limited approval of VOC control measures for Texas (62 FR 27964). This action finalized the proposed limited approval of control measures that were included as part of an earlier proposal related to a 15 Percent Rate of Progress Plan (61 FR 2751, Jan. 29, 1996). We converted this limited approval into a full approval on January 26, 1999 (64 FR 3841).

Since that time, EPA has approved further revisions as meeting RACT for the BPA area, including the following: Aerospace Coatings are addressed in 66 FR 54688 (October 30, 2001); Batch Processes and Industrial Wastewater in 65 FR 79745 (December 20, 2000); Wood Furniture Coating Operations and Ship Building and Repair Operations in 64 FR 12759 (March 15, 1999); Plastic Parts Coatings, Reactor Processes and Distillation Operations Process in the SOCOMI, and Volatile Organic Liquid Storage in 64 FR 3841 (January 26, 1999). While CTGs and ACTs were issued for a few other categories, there are no major sources in those categories in the BPA area. Texas submitted, and EPA approved, negative declarations on these categories in 61 FR 55894 (October 30, 1996). On May 15, 2001, EPA found that the BPA area had met VOC RACT requirements for moderate 1-hour ozone nonattainment areas (66 FR 26914). EPA approved additional control measures which enhanced the Texas VOC RACT SIP in an action on February 27, 2008 (73 FR 10383); among other things, this action included requirements to control VOC emissions from industrial wastewater systems in BPA.

Texas submitted two SIP revisions addressing the serious area RACT requirements (one lowering the limit of two VOC rules from 100 to 50 tpy, and another addressing serious VOC and NO<sub>x</sub> RACT overall), and we reviewed both SIP submissions with respect to the 1-hour ozone serious area RACT requirements for the BPA 1-hour ozone nonattainment area.

EPA has evaluated the analysis provided by Texas for determining whether the BPA area meets VOC RACT requirements for an area with a serious classification. The specific requirements to meet RACT and EPA's evaluation of these requirements are detailed in the TSD, which is available in the docket supporting this action: Docket No. EPA-

R06-OAR-2005-TX-0005. Texas' 30 TAC Chapter 115 revisions are included in the docket. Based upon the TCEQ's review and our evaluation, we are finding that the BPA area meets the serious area RACT requirements for VOCs under the 1-hour ozone standard.

## 2. NO<sub>x</sub> RACT

The Act's NO<sub>x</sub> RACT requirements are described by EPA in the "NO<sub>x</sub> Supplement" document titled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," published November 25, 1992 (57 FR 55620). EPA also discussed what it viewed as presumptive NO<sub>x</sub> RACT, concerning emission limits for certain categories of utility boilers, using a 30-day rolling average basis. For those source categories which EPA addressed in the NO<sub>x</sub> Supplement and their presumptive RACT, States were required to adopt rules that either met EPA's presumptions or were at least as stringent, to meet the NO<sub>x</sub> RACT requirements.

In setting the NO<sub>x</sub> RACT standards, the States may consider the total cost, total emission reductions, and cost effectiveness of controls needed to achieve the emission limits or equipment standards. Generally, the total NO<sub>x</sub> reductions achieved and the cost effectiveness of NO<sub>x</sub> controls fall within the ranges articulated in EPA's Office of Air Quality Planning policy memoranda, such as the March 16, 1994 memorandum entitled, "Cost-Effective Nitrogen Oxides (NO<sub>x</sub>) Reasonably Available Control Technology (RACT)", and the January 10, 1995 memorandum entitled, "De Minimis Values For NO<sub>x</sub> RACT." For example, the March 16, 1994 memorandum recommends that a NO<sub>x</sub> reduction of 30% to 50%, corresponding to a cost-effectiveness range of \$160 to \$1300, be considered in the setting of NO<sub>x</sub> RACT standards.

For the Texas SIP, EPA initially approved revisions to the SIP's NO<sub>x</sub> rules, found at 30 TAC Chapter 117, into the Texas SIP as adopted by the State on May 11, 1993, at 65 FR 11468 (March 3, 2000). Among other things, EPA approved the revised NO<sub>x</sub> rules for the BPA area as meeting NO<sub>x</sub> RACT, in that rulemaking action. See Table II of the 65 FR 11468 for a detailed summary of NO<sub>x</sub> emissions limits. By approving the revised NO<sub>x</sub> rules as RACT in that rulemaking action we also made the finding that the BPA area met the moderate area NO<sub>x</sub> RACT requirements.

On September 1, 2000 at 65 FR 53172, EPA approved revisions to the Texas SIP NO<sub>x</sub> rules at 30 TAC Chapter 117,

into the Texas SIP. EPA approved the rules as meeting RACT for the BPA area, among other things, in that rulemaking action. We evaluated the NO<sub>x</sub> emission limitations for the BPA area and found them to be reasonably available, and technologically and economically feasible. For more information, see Tables I and II of 65 FR 53172 for a detailed summary of those NO<sub>x</sub> emissions limits, as well as pages 15–18 of the TSD prepared in conjunction with this rulemaking.

On October 26, 2000, at 65 FR 64148, the EPA approved further revisions to the Texas SIP NO<sub>x</sub> rules at 30 TAC Chapter 117, into the Texas SIP. In that SIP revision action by EPA, the NO<sub>x</sub> revised rules entitled, "Emissions Specifications for Attainment Demonstration (ESAD)" were considered at that time to be more stringent than moderate area NO<sub>x</sub> RACT. Tables III and IV of 65 FR 64148 contain summaries of those NO<sub>x</sub> emissions limits. We did not make a NO<sub>x</sub> RACT determination at that time.

The State's NO<sub>x</sub> RACT demonstration submitted by the State on October 15, 2005, to show that serious NO<sub>x</sub> RACT is in place in the BPA area, relies upon all of the above SIP-approved NO<sub>x</sub> rules. Today, we are finding that the revised NO<sub>x</sub> rules approved into the Texas SIP on October 26, 2000, meet NO<sub>x</sub> RACT.

We are finding that the Texas SIP rules in 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds for major sources, located in the three Texas Counties of Jefferson, Hardin, and Orange, apply to all sources having a potential to emit of 50 tpy or more of NO<sub>x</sub>, and meet the NO<sub>x</sub> RACT requirements for a serious ozone nonattainment area under the 1-hour ozone standard. We have examined the NO<sub>x</sub> control requirements of the Texas SIP rules at 30 TAC Chapter 117 for the affected sources within these three Texas Counties, as approved into the Texas SIP, and have determined that the rules apply to serious area major source thresholds and that the level of control for these affected sources in the BPA area meets the NO<sub>x</sub> RACT requirements of the Act and is consistent with our guidance documents. For more information, see the TSD document prepared in conjunction with today's rulemaking action, as well as 65 FR 11468, 65 FR 53172, and 65 FR 64148. The TSD is made available in docket No. EPA-R06-OAR-2005-TX-0005. You can find the NO<sub>x</sub> RACT-related documents at [http://www.epa.gov/ttn/naaqs/ozone/ctg\\_act/index.htm](http://www.epa.gov/ttn/naaqs/ozone/ctg_act/index.htm) (URL dating October 9, 2008).

The existing NO<sub>x</sub> rules in the Texas SIP already apply to a serious area's source threshold and we either have found or are today finding that they meet NO<sub>x</sub> RACT. Based upon the TCEQ's review and our evaluation, we are finding that the BPA area meets serious area RACT requirements for NO<sub>x</sub> under the 1-hour ozone standard.

#### IV. What Is the Process for EPA To Approve This SIP Revision?

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment 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 action will be effective *September 8, 2009* without further notice, unless EPA receives relevant adverse comments by August 10, 2009.

If EPA receives such comment, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this 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 *September 8, 2009* and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### V. Final Action

EPA is approving Texas' Chapter 115 Control of Air Pollution from Volatile Organic Compounds amendments to sections 115.167, 115.169, 115.427, and 115.429 which extend requirements for control of VOC emissions to sources with the potential to emit 50 tpy or more, and incorporating this regulation into the Texas SIP. In conjunction with approving these VOC amendments into the Texas SIP, EPA finds they meet serious area VOC RACT. EPA also finds that the NO<sub>x</sub> rules approved into the Texas SIP on October 26, 2000, at 65 FR 64148, are RACT. Further, EPA is also finding, based upon our review and evaluation of the State's demonstration, that the BPA area meets the serious area

VOC and NO<sub>x</sub> RACT requirements for the 1-hour ozone standard.

#### VI. 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, 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (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 Clean Air Act;
- 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); and
- Does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose

substantial direct costs on Tribal governments or preempt Tribal law. 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 September 8, 2009. 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, Intergovernmental relations, Ozone, Nitrogen dioxides, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 29, 2009.

**Miguel I. Flores,**

*Acting 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. Section 52.2270 is amended as follows:

■ a. The table in paragraph (c) entitled "EPA Approved Regulations in the Texas SIP" is amended under "Chapter 115 (Reg 5)—Control of Air Pollution From Volatile Organic Compounds" by revising the entries for Sections 115.167, 115.169, 115.427, and 115.429.

■ b. The second table in paragraph (e) entitled “EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding at the end a new entry for

“VOC and NO<sub>x</sub> RACT demonstration for the 1-hour ozone NAAQS” for the Beaumont/Port Arthur Area. 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
*	*	*	*	*
<b>Chapter 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds</b>				
*	*	*	*	*
<b>Subchapter B—General Volatile Organic Compound Sources</b>				
*	*	*	*	*
<b>Division 6: Batch Processes</b>				
*	*	*	*	*
Section 115.167 .....	Exemptions .....	9/28/2005	7/10/2009	[Insert FR page number where document begins].
Section 115.169 .....	Counties and Compliance Schedules	9/28/2005	7/10/2009	[Insert FR page number where document begins].
*	*	*	*	*
<b>Subchapter E—Solvent-Using Processes</b>				
*	*	*	*	*
<b>Division 2: Surface Coating Processes</b>				
*	*	*	*	*
Section 115.427 .....	Exemptions .....	9/28/2005	7/10/2009	[Insert FR page number where document begins].
Section 115.429 .....	Counties and Compliance Schedules	9/28/2005	7/10/2009	[Insert FR page number where document begins].
*	*	*	*	*

(e) \* \* \*  
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**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
VOC and NO <sub>x</sub> RACT demonstration for the 1-hour ozone NAAQS.	Beaumont/Port Arthur Area: Hardin, Jefferson, and Orange Counties.	9/28/2005	7/10/2009	[Insert FR page number where document begins].