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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[TX-134-8-7532; FRL-7092-7]

Approval and Promulgation of Implementation Plans; Texas; Control of Emissions of Nitrogen Oxides From Stationary Sources in the Houston/Galveston Ozone Nonattainment Area**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The EPA is approving revisions to the Texas State Implementation Plan (SIP). This rulemaking covers five separate actions. First, we are approving revisions to the Texas Nitrogen Oxides (NO_x) rules for point sources of NO_x in the Houston/Galveston (H/GA) ozone nonattainment area of Texas as submitted to us by the State on December 22, 2000. These new limits for point sources of NO_x in the H/GA will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in the H/GA 1-hour ozone nonattainment area. Second, we are approving an exclusion, from the federally-approved SIP, of carbon monoxide (CO) and ammonia emission limits ancillary to the NO_x standards for post combustion controls found in Title 30 of the Texas Administrative Code (TAC), Chapter 117. Third, we are approving, by parallel processing, revisions to the Texas NO_x rules for stationary diesel engines or stationary dual-fuel engines in the H/GA 1-hour ozone nonattainment area. Fourth, we are approving, through parallel processing, revisions made to the Texas SIP concerning compliance schedules for utility electric generation and Industrial, Commercial, and Institutional (ICI) sources in the H/GA area. Fifth, we are approving, through parallel processing, revisions made to the Texas SIP concerning lean-burn and rich-burn engines. The EPA is approving the SIP revisions described as actions number one, two, three, four, and five to regulate emissions of NO_x as meeting the requirements of the Federal Clean Air Act (the Act).

DATES: This rule will be effective on December 14, 2001.**ADDRESSES:** Copies of the documents about this action including the

Technical Support Document, are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-6691, and Shar.Alan@epa.gov.

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Throughout this document "we," "us," and "our" means EPA.

1. What Actions Are We Taking in This Document?

On December 22, 2000, George W. Bush, then Governor of Texas, submitted rule revisions to 30 TAC, Chapter 117, "Control of Air Pollution From Nitrogen Compounds," as a revision to the SIP for point sources in the H/GA. The December 22, 2000, submittal required an 89 percent reduction in emissions of NO_x from point sources in the H/GA area.

As part of a negotiated settlement in the case of *BCCA Appeal Group v. Texas Natural Resource Conservation Commission*, No. GN1-00210 (250th Dist. Ct. Travis County)(complaint filed on January 19, 2001) reached on May 18, 2001, TNRCC issued a proposal to revise 30 TAC, Chapter 117 on May 30, 2001. On June 15, 2001, Texas Governor Rick Perry submitted a request letter to us asking to process the May 30, 2001, proposed rule revisions to 30 TAC, Chapter 117, as a revision to the SIP from point sources in the H/GA, through parallel processing.

On July 12, 2001 (66 FR 36532), we published a notice of proposed approval of the December 22, 2000 rules for point sources of NO_x in the H/GA. We also proposed to approve, through parallel processing, revisions to the NO_x rules for H/GA concerning (a) stationary diesel engines or stationary dual-fuel engines, (b) compliance schedules for utility electric generation and ICI sources and (c) lean-burn and rich burn engines. We noted, but did not propose

for approval, alternate NO_x emissions reductions and specifications contained in the May 30, 2001 proposed changes to the Texas rules.

On September 26, 2001, the TNRCC adopted as final rules amendments to 30 TAC, Chapter 117 proposed on May 30, 2001, with certain revisions.

On October 4, 2001, Texas Governor Rick Perry submitted a request letter to us asking us to process the September 26, 2001, final rule amendments to 30 TAC, Chapter 117, as a revision to the SIP for point sources in the H/GA area.

The State of Texas submitted this revision to us as a part of the NO_x reductions needed for the H/GA area to attain the 1-hour ozone standard. In this document we are taking five separate actions: (1) We are approving the December 22, 2000, rule revision to the Texas SIP as proposed at 66 FR 36532 (July 12, 2001). The State of Texas submitted this revision to us as a part of the NO_x reductions needed for the H/GA area to attain the 1-hour ozone standard. These NO_x reductions will assist H/GA to attain the 1-hour ozone standard. (2) We are approving exclusion of the CO and ammonia emission limits found in 30 TAC Chapter 117 in conjunction with NO_x

emission limits, from the federally approved Texas SIP. In our 65 Federal Register 64148 document published on October 26, 2000, and 65 Federal Register 64914 document published on October 31, 2000, we included CO and ammonia emission limits, in addition to the NO_x emission limits, as a part of the federally approved Texas SIP. Texas did not originally request their inclusion and subsequently asked us not to have these limits included as a part of the federally approved SIP. In today's final rulemaking, we are excluding the limits on CO and ammonia emissions, resulting from use of post combustion controls, from the federally approved SIP for Texas as proposed at 66 FR 36532, 36533. (3) We are approving, through parallel processing, revisions made to sections of 30 TAC, Chapter 117 that Texas proposed on May 30, 2001, and submitted to us as final rules on October 4, 2001, concerning stationary diesel engines or stationary dual-fuel engines because Texas is relying on these NO_x reductions to demonstrate attainment of the 1-hour ozone standard in the H/GA 1-hr ozone nonattainment area. (4) We are approving, through parallel processing, revisions made to sections of 30 TAC,

Chapter 117 that Texas proposed on May 30, 2001, and submitted to us as final rules on October 4, 2001, concerning NO_x emissions specifications and compliance schedules for utility electric generation and ICI sources in the H/GA area. (5) We are approving, through parallel processing, revisions made to sections of 30 TAC, Chapter 117 that Texas proposed on May 30, 2001, and submitted to us as final rules on October 4, 2001, concerning both the lean-burn and rich-burn reciprocating internal combustion engines.

In this document we are not approving the alternate or less stringent NO_x emissions specifications and less stringent emissions reductions that are part of the proposed May 30, 2001, Texas SIP revision, and submitted to us as final rules on October 4, 2001. See proposed action number six at 66 FR 66352, published on July 12, 2001.

Table I contains a summary list of the sections of 30 TAC, Chapter 117 that Texas proposed, on May 30, 2001, adopted on September 26, 2001, and submitted to us as final rules on October 4, 2001, that we are approving (with certain exceptions discussed below) for sources of NO_x in the H/GA area.

TABLE I.—SECTION NUMBERS AND SECTION DESCRIPTIONS OF 30 TAC, CHAPTER 117 AFFECTED BY THE MAY 30, 2001, PROPOSED RULE REVISION

| Section | Description |
|---------------|---|
| 117.10 | Definitions. |
| 117.101 | Applicability. |
| 117.103 | Exemptions. |
| 117.105 | Emission Specifications for Reasonably Available Control Technology. |
| 117.106 | Emission Specifications for Attainment Demonstrations. |
| 117.107 | Alternative System-wide Emission Specifications. |
| 117.108 | System Cap. |
| 117.110 | System Cap. |
| 117.111 | Initial Demonstration of Compliance. |
| 117.113 | Continuous Demonstration of Compliance |
| 117.114 | Emission Testing and Monitoring for the Houston/Galveston Attainment Demonstration. |
| 117.116 | Final Control Plan Procedures for Attainment Demonstration Emission Specifications. |
| 117.119 | Notification, Recordkeeping, and Reporting Requirements. |
| 117.121 | Alternative Case Specific Specifications. |
| 117.138 | System Cap. |
| 117.201 | Applicability. |
| 117.203 | Exemptions. |
| 117.205 | Emission Specifications for Reasonably Available Control Technology (RACT). |
| 117.206 | Emission Specifications for Attainment Demonstrations. |
| 117.207 | Alternative Plant-wide Emission Specifications. |
| 117.208 | Operating Requirements. |
| 117.210 | System Cap. |
| 117.211 | Initial Demonstration of Compliance. |
| 117.213 | Continuous Demonstration of Compliance. |
| 117.214 | Emission Testing and Monitoring for the Houston/Galveston Attainment Demonstration. |
| 117.216 | Final Control Plan Procedures for Attainment Demonstration Emission Specifications. |
| 117.219 | Notification, Recordkeeping, and Reporting Requirements. |
| 117.221 | Alternative Case Specific Specifications. |
| 117.471 | Applicability. |
| 117.473 | Exemptions. |
| 117.475 | Emission Specifications. |
| 117.478 | Operating Requirements. |
| 117.479 | Monitoring, Recordkeeping, and Reporting Requirements. |
| 117.510 | Compliance Schedule for Utility Electric Generation in Ozone Nonattainment Areas. |

TABLE I.—SECTION NUMBERS AND SECTION DESCRIPTIONS OF 30 TAC, CHAPTER 117 AFFECTED BY THE MAY 30, 2001, PROPOSED RULE REVISION—Continued

| Section | Description |
|---------------|--|
| 117.520 | Compliance Schedule for Industrial, Commercial, and Institutional Combustion Sources in Ozone Nonattainment Areas. |
| 117.534 | Compliance Schedule for Boilers, Process Heaters, Stationary Engines, and Gas Turbines at Minor Sources. |
| 117.570 | Use of Emissions Credits for Compliance. |

2. Did We Receive Written Comments on These Proposed Actions?

Yes, we received written comments on these proposed actions. See sections 4 and 5 of this document for additional information.

3. When Did the Public Comment Period for Our Proposal on These Actions Expire?

The public comment period for our proposal on these actions expired on August 13, 2001.

4. Who Submitted Comments to Us?

We received written comments from Reliant Energy, Inc. (RE); Environmental Defense (ED) of Austin, Texas; Louisiana-Pacific Corporation (LPC); Business Coalition for Clean Air Appeal Group (BCCAAG) represented by Baker Botts, L.L.P. of Dallas, Texas; and Texas Industries Operations, L.P. (TXI) represented by Jenkins and Gilchrist of Austin, Texas.

5. How Do We Respond to the Submitted Written Comments?

The summary of the written comments that we received and our response to those comments are as follows:

Comment #1: RE commented that it supports EPA’s approval of the emissions specifications for the utility boilers (proposed action number four, section 9, Table VI of 66 FR 36532, published on July 12, 2001).

Response to comment #1: We appreciate the commenter’s support in this regard.

Comment #2: RE commented that it supports the BCCAAG’s position on alternate emission specifications and further adjustments to the proposed NO_x emissions reductions.

Response to comments #2: A Consent Order filed in *BCCA Appeal Group v. Texas Natural Resource Conservation Commission*, No. GN1-00210 (250th Dist. Ct. Travis County) (complaint filed on January 19, 2001), among other things, provides for completion of a Science Evaluation to study the causes of rapid ozone formation events and to identify potential control measures not found in the H/GA Attainment Demonstration. We can not act upon the suggested alternate emission

specifications and any further adjustments to the State’s NO_x rules without the completed studies and necessary modeling relevant to the H/GA area. Neither the State nor EPA has any final scientific data and modeling results to support a final action that relaxes the NO_x reductions required presently by the State for the H/GA area. Such an action is not ripe for EPA’s review. Therefore, we acknowledged but did not propose to approve the BCCAAG’s alternate emission reductions and schedules identified in 66 FR 36532, published on July 12, 2001. At present there is inadequate information in the record to demonstrate that the alternate emission specifications and further adjustments to the federally-approved NO_x emissions reductions would enable H/GA to attain the NAAQS for ozone.

Comment #3: RE states that it is incorporating its September 25, 2000 comments to TNRCC on the SIP into its present comments on EPA’s proposed approval of the SIP. RE commented that it incorporates the BCCAAG’s comments submitted to the TNRCC by reference in its letter. In the comments filed by letter of September 25, 2000, with TNRCC, RE proposed the REI NO_x Emission Reduction Plan, formulated by the company, as an alternative to the plan proposed by TNRCC. RE further commented that (a) the TNRCC proposed NO_x emission rates for gas-fired boilers were technically infeasible and economically unreasonable; (b) TNRCC underestimated the cost of controlling NO_x emission from utility boilers and gas turbines; (c) CO limits for Gas, Oil, and Coal-fired units need delineation; (d) the baseline heat input for 30-day average limit calculations should be changed; (e) heavy-duty engine NO_x reduction technology is not effective on power take off devices on utility vehicles; (f) REI supports the rule revisions regarding the cap and trade program filed by the Texas Industry Project (TIP); and (g) the photochemical modeling forming the basis of the rule is not simulating meteorological and chemical processes with sufficient accuracy to quantitatively predict the emission reductions needed to attain the ozone NAAQS.

Response to comment #3: We will respond to the BCCAAG’s comments that have been incorporated by reference by RE later in this document. See our responses to comments #21 through #30. We are responding here only to those comments by RE in September 2000, which are germane to the present rulemaking adopting the TNRCC revisions to 30 TAC Chapter 117 into the SIP. The TNRCC responded to RE comments in Rule Log No. 2000-011H-117-AI (December, 2000). The Clean Air Act assigns to the states initial and primary responsibility for formulating a plan to achieve NAAQS. It is up to the state to prepare state implementation plans which contain specific pollution control measures. It is clear from review of the TNRCC’s analysis, contained in Rule Log No. 2000-011H-117-AI, that the issues raised by RE comments were evaluated and considered by TNRCC during the state rulemaking process.

The EPA’s responsibilities under the Act are qualitatively different from those of the state agency. The EPA is charged with reviewing and approving or disapproving of enforceable implementation plans prepared by states and other political subdivisions identified in the statute. It is not EPA’s role to disapprove the State’s choice of control strategies if that strategy will result in attainment of the one-hour standard and meets all other applicable statutory requirements. See *Union Electric v. EPA*, 427 U.S. 246 (1976); *Train v. NRDC* 421 U.S. 60 (1975). The EPA’s role in reviewing SIP submittals is to approve state choices, provided that they meet the criteria of the Clean Air Act. Federal inquiry into the economic reasonableness of state action is not allowed under the Clean Air Act (see, *Union Electric Co., v. EPA*, 427 U.S. 246, 255-266 (1976); 42 U.S.C. 7410(a)(2)) other than for purposes of evaluating the reasonableness and availability of alternatives for purposes of a waiver of Federal preemption. The State has submitted information indicating that the administrative requirements of Texas law have been met. We defer to the State analysis until such time as a State Court has determined otherwise. Our review of the

TNRCC's responses to RE comments, taken together with all the rest of the information in the administrative record for the SIP, does not lead to the conclusion that the SIP is inadequate to attain the ozone NAAQS in the H/GA area.

Comment #4: LPC commented that the NO_x emission reductions and corresponding emission limits are too low for RACT for industrial wood-fired boilers.

Response to comment #4: The Emission Specifications for Attainment Demonstration (ESAD) for wood-fired boilers, taken together with ESADs for other point sources of NO_x, were developed in order for the H/GA area to achieve attainment with the ozone NAAQS. The ESADs are technically feasible standards which represent the level of point source NO_x controls necessary for the H/GA area to attain the NAAQS. The EPA recently published an updated version of AP-42 concerning wood-fired boilers, discussed in the next response.

Comment #5: LPC commented that EPA should evaluate the NO_x RACT on wood-fired boilers, and particularly how it applies to boilers of differing design, heat input, and wood-fuel. LPC noted that the California Air Resource Board's 1991 RACT for wood-fired boilers in certain nonattainment areas was 0.052 lb NO_x/MMBtu or 40 parts per million (ppm).

Response to comment #5: The AP-42 section 1.6.1 referenced by the LPC in the commentor's August 10, 2001, comment letter is from the 2/98 or 2/99 version of the AP-42 (older AP-42). The LPC's comment letter is dated August 10, 2001. On August 21, 2001, EPA released its final revised version of the AP-42, section 1.6 concerning "Wood

Residue Combustion in Boilers." You can find the latest version of the AP-42, section 1.6 (8/01 version) concerning "Wood Residue Combustion in Boilers" at <http://www.epa.gov/ttn/chief/ap42/ch01/final/c01s06.pdf>. The NO_x emission factor rating in the Table 1.6-2 of the older AP-42s were of "C" and "D" rating category. The NO_x emission factors in the new Table 1.6-2 are not categorized as being boiler type and heat input (size) specific or dependent. The NO_x emission factor rating of the new NO_x emission factor from wood-fired boilers listed in the new Table 1.6-2 is reported as high as "A" rating. The "A" rating of the NO_x emission factor, from wood-fired boilers in the new AP-42, indicates that differentiation of the boiler type and heat input may not be as significant as once thought to be. In Texas the original NO_x RACT rules, 30 TAC Chapter 117, were adopted in 1993 and earlier. As H/GA area continued to be nonattainment for ozone and photochemical grid modeling indicated that those early NO_x control measures were not adequate to bring the area into attainment with the one-hour ozone standard, more source categories became subject to Chapter 117 rules, and the Chapter 117 requirements and emission limitations became more stringent. The California Air Resource Board recommended the 0.052 lb NO_x/MMBtu limitation in a document entitled "Determination of RACT/ BARCT for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters" in 1991. The air pollution control technology is a dynamic and evolving process. Ten years ago, in 1991, a concentration based NO_x limit in single digit ppm was impracticable. With today's technology and advancements in process control

techniques, such NO_x limits for combustion sources are not uncommon. Therefore, we are of the opinion that the State in its proposed NO_x emission limitation of 0.046 lb NO_x/MMBtu has taken the boilers of differing type and heat input into consideration, and this limit is approvable.

Comment #6: LPC recommended that EPA should consider and clarify potential complications with meeting PM-10 and NO_x emission limits with multiple and simultaneous controls. In particular, LPC commented that NO_x control technologies for wood-fired boilers are unproven, and that it was unable to locate industry-specific data supporting the proposed limit of 0.046 lb NO_x/MMBtu.

Response to comment #6: According to section 4.5 of the "Background Document Report on Revisions to 5th Edition AP-42, Section 1.6, Wood Residue Combustion In Boilers", dated July 2001, emission factors for NO_x have been replaced with new factors. The old (2/99) AP-42 NO_x emission factors separated the data by boiler configuration. The average NO_x emission factors for each individual combustor were grouped by fuel type. All of the data were from boilers that had no NO_x emission controls and were from boilers burning either dry wood or bark and bark/wet wood. After analysis of the data, the AP-42 factors were determined by grouping the data by dry or wet wood regardless of firing configuration. The following table shows the summary statistics of the data. The old (2/99) AP-42 factors have been converted to lb/MMBtu for this table. The units for the minimum and maximum are also lb/MMBtu. The following table contains NO_x emission factors for wood-fired boilers.

TABLE II.—NO_x EMISSION FACTORS FOR WOOD-FIRED BOILERS

| Fuel | Firing configuration | 2/99 AP-42 NO _x Factor (lb/MMBtu) | New AP-42 NO _x Factor (lb/MMBtu) | Count | Minimum | Maximum |
|---------------------|----------------------|--|---|-------|---------|---------|
| Bark/Wet Wood | All | 0.042/0.16/0.22 | 0.22 | 82 | 0.023 | 1.281 |
| Dry Wood | All | 0.042/0.16/0.22 | 0.22 | 8 | 0.187 | 0.863 |

The use of one emission factor for all firing configurations, 82 different counts of data, NO_x emission factors as low as 0.023 lb/MMBtu, all together indicate that the proposed limitation of 0.046 lb NO_x/MMBtu by adoption of combustion control and/or post combustion controls is practicable. Section 5 of the "Background Document Report on Revisions to 5th Edition AP-42, Section 1.6, Wood Residue Combustion In Boilers" dated July 2001, contains a

listing of 72 references used to develop this report. You can find a copy of this report at: <http://www.epa.gov/ttn/chief/ap42/ch01/bgdocs/b01s06.pdf>

On the issue of multiple controls, it is not uncommon to see a series of different control devices serving one combustion source. For example, a quick search of the California Air Resource Board's Clearinghouse reveals that for wood fired boilers, thirteen years ago, a 216 MMBtu/hr fluidized

bed combustion boiler fired with pelletized wood waste (even smaller than LPC's 249 MMBtu/hr boiler) was permitted to use ammonia injection (thermal de-NO_x) to control NO_x emissions, limestone injection to control sulfur oxides (SO_x) emissions, and multiclone and baghouse, to reduce particulate matter (PM) emissions. The permit A310-300-88, for this source was issued on 09/30/1988. This existing source is only one example of many

other wood-fired boilers that employ multiple control devices to reduce emissions of different pollutants without jeopardizing compliance with regulations whether proposed/promulgated by the State or EPA. The record supports that use of multiple controls in association with operation of a wood fired boiler has been successfully practiced elsewhere and is technically feasible in the H/GA area.

Comment #7: LPC commented that EPA should evaluate the negative impacts associated with a forced change from a sustainable and waste minimizing energy source to other energy alternatives.

Response to comment #7: Based on the background information discussed above concerning wood-fired boilers, EPA disagrees that the ESAD for this equipment in the Texas SIP approved today will necessitate a forced change of fuel source. There may be instances in which it may be practical or economically advantageous for an individual facility to effect such changes. On this issue as with others, the state has the initial and primary responsibility of formulating plans to attain the NAAQS.

Comment #8: LPC expressed its concern over introducing ammonia in its plywood mill that employs 400 people.

Response to comment #8: We can understand and do appreciate LPC's concern about safety of its employees due to potential introduction of ammonia into its plywood plant. Historically many facilities in Europe, Japan, and the United States have used injection of this reagent as a method of control to reduce NO_x or SO_x emissions from their combustion sources. As material contained in the docket indicates if control equipment is properly operated, there would be no excess ammonia emissions. Once again, we are of the opinion that LPC's expressed concern, over introduction of a harsh compound at its mill, can be alleviated by proper training of its operators, implementing safe and good housekeeping/maintenance practices, and actively preparing employees for possible emergency episodes. As a regulatory safeguard, the 30 TAC, Chapter 117 does set short term emission limits for ammonia associated with operation of combustion sources and their associated control devices. See 117.105(j), 117.106(d)(1)(B)(2), 117.205(g), and 117.206(e)(2). Additionally, Chapter 117 allows for operational flexibility and emission cap and trading as viable options to a source or operator. We believe that LPC can safely introduce ammonia or other

reagent to reduce NO_x emissions from its wood-fired boiler, but that LPC can also come into compliance by other means if it chooses to do so.

Comment #9: TXI commented that its lightweight aggregate kilns in Fort Bend County, Texas are the only such kilns in the H/GA area and thus are unfairly targeted. TXI states that NO_x emissions from its kilns account for only 0.02% of the NO_x reductions from point sources and the NO_x reduction technique has not been demonstrated.

Response to comment #9: The EPA has reviewed the TNRCC's response to this and other comments, and generally agrees with the TNRCC's analysis. The logic for including lightweight aggregate kilns as a part of the control strategy to reduce its NO_x emissions is due to several factors. NO_x emissions from these kilns have been uncontrolled previously. The TXI plant in Fort Bend is a major source of NO_x. The photochemical grid modeling indicates that additional NO_x reductions are needed to bring the H/GA area into attainment with the one-hour ozone standard. The fact that large amounts of NO_x reductions are needed to bring the H/GA area into attainment constitutes grounds to require NO_x emissions reductions from a major and uncontrolled source of NO_x, as is the case with the TXI's Fort Bend operation, in a severe ozone nonattainment area, even though the source's NO_x emissions are a small percentage of the area's total NO_x emissions. Advances in air pollution control technology combined with the Chapter 117 rules' operational flexibility, and emission cap/trading as available options to the source or operator should enable the commenter to comply with the proposed emission limitation of 117.206(c)(13). The H/GA area's control strategy requires other sources with even lower NO_x emissions to reduce their emissions at much higher rates. An 11 hp stationary diesel engine emits less NO_x per day and year than TXI's plant in Fort Bend County. Under the proposed requirements, this 11 hp stationary diesel engines will have to reduce its emissions from 11.0 grams NO_x/hp-hr to 5.0 grams NO_x/hp-hr. This degree of reduction for stationary diesel engines in excess of 50% is far more than the degree of reduction required of TXI's lightweight aggregate kilns in Fort Bend County. Therefore, we disagree with the TXI's position that NO_x emissions from its lightweight aggregate kilns in Fort Bend County are small, that it has been unfairly targeted by the State, and that a reasonable NO_x control technique for the Fort Bend plant is not feasible.

Comment #10: TXI comments that the proposed Chapter 117 rule is a "major environmental rule" and potentially subject to the requirements of Texas Government Code section 2001.0225 (25 Texas Register of August 25, 2000). As a result, a cost, benefit and economic analysis to comply with the control strategy for TXI's lightweight aggregate plant should have been performed by the TNRCC.

Response to comment #10: As stated previously, EPA's role in reviewing SIP submittals is to approve state choices, provided that they meet the criteria of the Clean Air Act. Federal inquiry into the economic reasonableness of state action is not allowed under the Clean Air Act (*see, Union Electric Co., v. EPA*, 427 U.S. 246, 255-266 (1976); 42 U.S.C. 7410(a)(2)) other than for purposes of evaluating the reasonableness and availability of alternatives for purposes of a waiver of Federal preemption. The State has submitted information indicating that the administrative requirements of Texas law have been met. We defer to the State analysis until such time as a State Court has determined otherwise. Federal inquiry into the economic reasonableness of state action is not allowed under the Clean Air Act (*see, Union Electric Co., versus EPA*, 427 U.S. 246, 255-266 (1976) and 42 U.S.C. 7410(a)(2)) other than for purposes of evaluating the reasonableness and availability of alternatives for purposes of a waiver of Federal preemption. The State has submitted information indicating that the administrative requirements of Texas law have been met. We defer to the State analysis until such time as a court of competent jurisdiction determines otherwise.

Comment #11: TXI commented that mobile sources are the cause of nonattainment, that major cities of the State have expanded, and that point sources need not to be further controlled.

Response to comment #11: We do agree that mobile sources are a major source of air pollution in major cities in the States and mobile source emissions need to be controlled to help bring the nonattainment areas into attainment with the ozone standards. The State has proposed and adopted many measures to reduce emissions associated with on-road and off-road mobile source. However, as TNRCC noted in its response to this comment, while mobile sources contribute a significant share of the ozone-forming pollutants in H/GA, modeling analyses show that reducing mobile source emissions alone will not be sufficient to bring the area into attainment. The Texas SIP must

therefore also regulate point sources of NO_x. The 1996 emission inventory of NO_x sources in the H/GA area indicates that 54% (672.05 of total 1250.16 tpd) of emissions are from stationary sources, while on-road mobile sources account for 24% (302.04 of the total 1250.16 tpd) of the emissions. See <http://www.tnrcc.state.tx.us/air/aqp/ei/rsumhg.htm#nox>.

Further, the State has shown that even if it controlled all of the mobile source emissions to zero, the H/GA area would still be in nonattainment. Therefore, the record shows that both mobile and stationary sources need to be controlled simultaneously to achieve the ozone attainment goal.

Comment #12: TXI commented that the State did not have any technical justification for a 30% reduction in NO_x emissions from lightweight aggregate kilns. TXI contended the reduction requirement is arbitrary and has no scientific basis.

Response to comment #12: The TNRCC based the 30% reduction in NO_x emissions on availability of combustion modification, combustion control, mid-kiln firing, 30-day rolling average, and the emission cap and trading options to the source or operator. The available technologies, operational flexibilities, and the emission cap and trading allowed for in Chapter 117 rules, should accommodate a source to obtain 30% reduction in its NO_x emission as compared to the source's 1997 baseline emissions. The 30% reduction in NO_x emissions from a kiln is consistent with EPA's publication number "EPA-453/R-94-004," entitled "Alternate Control Techniques for Cement Plants." Therefore, we believe that the State's record supports the 30% reduction requirement, is technically feasible, and based on a sound scientific basis.

Comment #13: ED commented that the proposed rule for stationary diesel engines fails to provide sufficient emissions limitations.

Response to comment #13: As stated in section six of 66 FR 36532, published on July 12, 2001, Texas had not proposed any regulations in the SIP limiting NO_x emissions from stationary diesel engines or stationary dual-fuel engines prior to May 30, 2001. After the State adopted and submitted its December 2000 attainment demonstration SIP for the H/GA area, and based upon Texas' proposed Reasonably Available Control Measures (RACM) review, the State determined that this particular source category should be controlled in the H/GA area to meet the Act's RACM requirements. Adopting these emission limitations

will only strengthen the existing federally-approved Texas SIP and further supports the H/GA area's attainment of the ozone NAAQS. This was our basis for proposing to approve the rule revision. The proposed emission specifications for stationary diesel engines or stationary dual-fuel engines are based on 40 CFR 89.112(a), Table I. For the H/GA area, the State has shown that the chosen emission limitations are technically and economically feasible and further reductions would not benefit the H/GA area's environment.

Comment #14: ED commented that the TNRCC should establish the same requirements for new and existing stationary diesel engines in the H/GA area that are not used exclusively during infrequent emergency or backup situations.

Response to comment #14: The TNRCC has adopted Chapter 117 regulations for control of NO_x emissions from stationary diesel engines or stationary dual-fuel engines. The emission specifications for stationary diesel engines or stationary dual-fuel engines are based on 40 CFR 89.112(a), Table I. We understand Texas has adopted even more stringent standards for new engines getting standard permits. We believe it is reasonable for existing engines to have less stringent standards than new engines because it is generally more feasible to achieve cleaner operation when starting from an initial design rather than retrofitting an older engine. Furthermore, the emissions of NO_x and CO from combustion sources are interrelated. Requiring further reductions in NO_x emissions from existing engines could potentially result in increases of CO emissions, and must be approached carefully. The State received a similar comment. In their response they explained that based on information in the emissions inventory and contact with diesel engine vendors and others familiar with the stationary diesel engines in the H/GA area, the State is unaware of any existing stationary diesel engines that are being operated in situations other than generation of electricity in emergency situations or operation for maintenance and testing. The TNRCC believes and EPA agrees that few existing engines will be moved from emergency service to routine or peak shaving operations for the following reasons. Any existing engines at a site with a collective design capacity to emit (from units with chapter 117 emission limits) greater than ten tpy of NO_x are subject to the Chapter 101 mass emissions cap and trade program if they choose to increase

their operation to 100 hours per year or more (based on a rolling 12-month average) and, in addition to having to comply with the Chapter 117 rules, will only be issued NO_x emissions allocations based on their historical activity level which would be much lower than 100 hrs/year. Existing engines theoretically could be switched to peak shaving service up to 100 hours/year but in reality only about 40 hours/year would be available for this type of operation. The remaining time would have to be used for normal routine testing of the engines. It is unlikely that the profit from sale of electricity would justify the cost of the modifications to the switching system for only about 40 hours of operation. EPA concludes that additional control beyond the existing program is not reasonable.

Comment #15: ED comments that potential emissions from stationary diesel engines are significant and refers to an electricity management and consulting firm that is marketing the concept of linking these emergency diesel back up generators together as a mid-size peaking unit through a virtual power plant.

Response to comment #15: It is unclear how many or which of these emergency back up generators in the H/GA area could conceivably participate in such a virtual power plant marketing plan. Should the NO_x emissions and number of emergency back up generators participating in this virtual power plant market or otherwise operating in H/GA area grow to such a degree that they prove to be significant for purposes of attaining the ozone NAAQS, we will work with the State to evaluate this concern in the mid-course review process. Presently, neither the State nor we have the information whether this type of control is feasible for the H/GA area. Additional control measures will be required as necessary to achieve the NAAQS as expeditiously as practicable but no later than November 2007. This will allow adjustments to be made should a source category grow at an unexpectedly large rate.

Comment #16: ED commented that EPA should require the TNRCC to make "one-date" as the effective date for compliance with the NO_x emission limitations for the stationary diesel engines or dual-fuel stationary engines instead of the Tier 1, 2, or 3 approach.

Response to comment #16: The phased-in approach or the Tier 1, 2, or 3 compliance date method has been proven to work in practice at the Federal level (40 CFR 89.112(a)), and we have decided to adopt this approach for practical reasons. We are of the opinion

that the phased-in approach is a proper and practical method of phasing-in new emission limitations where a large range of engine sizes and various engine ages are involved. We disagree with the ED's position to have the TNRCC replace the effective compliance date of NO_x emission limitations for the stationary diesel engines or dual-fuel stationary engines from the proposed Tier 1, 2, or 3 method to a "one-date" for all.

Comment #17: ED commented that EPA should significantly strengthen the NO_x emission requirements for the existing small backup electric generating units.

Response to comment #17: As stated earlier, the emission specifications for stationary diesel engines or stationary dual-fuel engines are based on 40 CFR 89.112(a), Table I. Currently, we are not aware of any other State program that has adopted more stringent emission specifications for stationary diesel engines or stationary dual-fuel engines. Although it is possible that existing emergency diesel generators could be converted to a peak shaving use, and consequently contribute to ozone exceedances due to operation on high electricity demand during summer days and conditions that are conducive to formation of more ozone, these diesel units are normally equipped with a timer that operates the engines for one-half to one hour weekly for testing and maintenance purposes. To demonstrate continuous compliance, subsection 117.213(i) requires engines to operate with an elapsed run time meter and further states that the installed run time meters shall be "non-resettable."

52 weeks per year × ½ hour to 1 hour per week for maintenance and testing = 26 to 52 hours per year for maintenance and testing. Due to the fact that the 100 hours per year limit includes the testing and maintenance times also, the remaining (100 hours per year – 26 to 52 hours per year for maintenance and testing = 74 to 48 hours per year for peak shaving) 48 to 74 hours per year would be too short a time to economically justify the expense of telemetry interconnect equipment in order to generate and supply power to a grid system. These inherent difficulties will serve as hurdles/reasons in discouraging an operator from converting its emergency backup generators to peak shaving units. Furthermore, by converting these backup generators the source or operator would always run the risk of not having power available to itself when a true emergency situation arises at its own site. As stated earlier, should the NO_x emissions and number of emergency back up generators participating in this

virtual power plant market actually prove to be significant, we will work with the State to evaluate this concern in the mid-course review process.

Comment #18: ED commented that EPA must reject efforts to relax the control measures on the books before the identified shortfall in emission reductions is eliminated.

Response to comment #18: The Supreme Court has consistently held that under the Act, initial and primary responsibility for deciding what emissions reductions will be required from which sources is left to the discretion of the States. *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457 (2001); *Train v. NRDC*, 421 U.S. 60 (1975). This discretion includes the continuing authority to revise choices about the mix of emission limitations. *Train* at 79. Therefore, EPA believes that it is appropriate and authorized under the Act for a State to continue to update its growth projections, inventories, modeling analyses, control strategies, etc., and submit these updates as a SIP revision based on newly available science and technology.

However, Section 110(l) of the Act (added by the 1990 Amendments to the Act) governs EPA's review of a SIP revision from a state that wishes to make changes to its approved SIP. This section provides that EPA may not approve a SIP revision if it will interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. The Supreme Court under the 1970 CAA, observed that EPA's judgment in determining the approval of a SIP revision is to "measure the existing level of pollution, compare it with the national standards, and determine the effect on this comparison of specified emission modifications." *Train* at 93. Therefore, if we receive an attainment demonstration SIP revision from Texas that contains relaxed control measures or the replacement of existing control measures, we would consider the revised plan's prospects for meeting the current attainment requirements and other applicable requirements of the Act. See, the Act section 110(k)(3), *Union Electric v. EPA*, 427 U.S. 246 (1976) and *Train v. NRDC*, 421 U.S. at 79.

In summary, the State may choose to submit a SIP revision in 2002 or 2003 as it has suggested it may do. If we receive a SIP revision that meets our completeness criteria, we will review it against the statutory requirements of section 110(l). Further, the Act requires us to publish a notice and to provide for public comment on our proposed

decision. The EPA believes that it is in the context of that future rulemaking, not EPA's current approval, that the commenter's concern regarding the appropriateness of any replacement measures adopted by the State should be considered.

Comment #19: ED commented that EPA should not approve the NO_x reduction proposal of 90% for electric power plants, but should instead require the electric power plants to meet the 93% NO_x reduction.

Response to comment #19: The NO_x control strategy of December 22, 2000, SIP revision called for 595 tons per day reduction. See Table V, section 8 of this document. The revised NO_x control strategy of the May 30, 2001, calls for 588 tons per day reduction. See Table XI, section 16 of this document. Although ED is correct in stating that the amount of NO_x reduction from electric power plants has been reduced, the NO_x emissions reductions from recent State Legislative actions requiring some grandfathered sources to reduce their emissions by about 50% offsets and counter balances the power plant's NO_x emission reduction adjustment. Therefore, the NO_x emissions in east and central Texas (regional strategy) will be less than what the State SIP had called for in the December 22, 2000 SIP revision. In terms of cost per ton of overall NO_x removed, the modified NO_x emission limitations of the May 30, 2001 state proposal would be more cost effective than the December 22, 2000, control strategy scenario for the H/GA area. We disagree with the ED's position to reject the revised May 30, 2001 reduction proposal for the electric power plants.

Comment #20: ED commented that the compliance schedule under action number four of the proposal 66 FR 36532, (July 12, 2001) is not as expeditious as practicable.

Response to comment #20: The compliance schedule under action number four of the proposal 66 FR 36532, (July 12, 2001) was needed to allow affected sources more planning time and choices to put in place the NO_x emissions reductions. Action number four requires utility electric generation and ICI sources to adopt a phased-in approach (year by year) and incremental method (percent NO_x reduction required each year) for compliance purposes. According to this approach the ultimate compliance date of 2007 will remain unchanged. In our proposal published on July 12, 2001, we made it very clear that the final compliance date to attain compliance with the one-hour ozone standard in the H/GA area will remain the same and

unchanged and that any control strategy will have to achieve attainment with the federal one-hour ozone standard by 2007. The essential and resulting final compliance date will remain the same; the distinction is the route and method of approach used to reach the same end point. Therefore, we are of the opinion that compliance requirements under action number four of the July proposal are as expeditious as practicable.

Comment #21: BCCAAG commented that most of the NO_x emission limitations have been developed with a less than complete analysis of economic and technical feasibility or possible economic or environmental dis-benefits. It further stated that the TNRCC's 90% NO_x control approach is arbitrary and circumvents the intent established in the Texas Clean Air Act.

Response to comment #21: We do not believe that reducing NO_x and thus controlling ozone in the H/GA area will constitute an environmental dis-benefit.

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Because this rule approves preexisting requirements under state law and does not impose any enforceable duty beyond that required by state law and hence does not have a significant economic impact on a substantial number of small entities, an analysis under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) is not required.

Details on the State's assessments of financial impact and technical feasibility can be found throughout the record generated by the TNRCC for the SIP ("SIP documents"). The EPA's role in reviewing SIP submittals is to approve state choices, provided that they meet the criteria of the Clean Air Act. Federal inquiry into the economic reasonableness of state action is not allowed under the Clean Air Act (*see, Union Electric Co., v. EPA*, 427 U.S. 246, 255–266 (1976); 42 U.S.C. 7410(a)(2)) other than for purposes of evaluating the reasonableness and availability of alternatives for purposes of a waiver of Federal preemption. The State has submitted information indicating that the administrative requirements of Texas law have been met. We defer to the State analysis until such time as a State Court has determined otherwise.

Comment #22: BCCAAG commented that point sources control technology has advanced in recent years but there is no one demonstrated retrofit technology application to achieve 90% NO_x reduction from point sources.

Response to comment #22: We agree with the statement that NO_x point

source control technology has advanced in recent years. In fact, levels of NO_x emissions control that can be achieved have advanced to degrees that may not have been practicable a decade or so ago. Pollution control technology is a dynamic and evolving field. The domain of reference for NO_x retrofit technology is not limited to this country. It is technologically feasible to accomplish the degree of control that the rule calls for; the issue becomes cost and economic feasibility rather than technical infeasibility. We also refer the commenter to 26 Texas Register 524, published on January 12, 2001, for a detailed explanation by the TNRCC of the level of NO_x control. We responded to comments on the cost and economic feasibility of the control requirements in our response to comment #22 of this document.

Comment #23: BCCAAG commented that not enough time (year-end 2004) has been allowed in the rule to implement the required NO_x reductions from point sources.

Response to comment #23: In Texas the original NO_x RACT rules, 30 TAC Chapter 117, were adopted in 1993 and earlier. As the H/GA area continued to remain nonattainment for ozone and it became evident that earlier NO_x control measures were not adequate to bring the area into attainment with the one-hour ozone standard, more source categories became subject to the Chapter 117 rules, and the Chapter 117 requirements and emission limitations became more stringent. Historical revisions to the Chapter 117 rules, including the additional NO_x control from point sources in the H/GA area, have not been introduced by the State without active participation of the stakeholders. We believe that the majority of the affected sources have been aware, involved, and actively participating in the regulatory development arena of Chapter 117 rules over the last decade. The H/GA area is classified as a severe-17 ozone nonattainment area according to the federal Clean Air Act, 42 U.S.C., § 7401 *et seq.*, and will need to attain the one-hour ozone standard by November 15, 2007. Under 42 U.S.C., § 7511a(d) the State of Texas is required to develop and submit to EPA a SIP revision that will bring the H/GA area into attainment with the one-hour ozone standard. To be classified as attainment with the one-hour ozone standard by EPA, three complete calendar years of ozone monitoring data are needed (Appendix H to 40 CFR Part 50—Interpretation of The 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone). Reading 42 U.S.C. § 7511a(d) and 40 CFR 50 Appendix H together, as

a practical matter, the year-end 2004 deadline will effectively become an initial compliance deadline; otherwise the H/GA area will not be able to comply with the compliance deadline of November 15, 2007. Thirty plus years of ozone nonattainment in the H/GA area warrants no more delays. We fully support the State's proposed implementation deadline and therefore disagree with the commenter's position on insufficiency of time allowed to implement the required NO_x control measures.

Comment #24: BCCAAG commented that 90% reduction effectively eliminates the ability to create surplus credits under the cap and trade program and will cause regional economic impacts that would lead to a "no future growth" situation.

Response to comment #24: We want to emphasize that it is not within the scope of this rulemaking to forecast on the region's future business growth and expansions. The Mass Emissions Cap and Trade Program (30 TAC Chapter 101, Subchapter H, Division 3) is being approved in an action published separately in this issue of the **Federal Register**. The emission credits under the mass emissions cap and trade program will have to be actual, surplus, real, enforceable, and certifiable. These rules will bring more flexibility and financial incentives to reduce air pollution, promote technological innovations, and encourage creative methods of pollution control over the old command and control approach for each individual source. The Chapter 117 rules do not limit or stop future economic expansion and growth. Generally, environmental regulations do not limit growth; they enhance sustainable growth. We do not believe that Southern California experienced no growth under its Regional Clean Air Incentives Market (RECLAIM) program. In fact, one cannot dispute the business expansions and economic prosperity of Southern California in the years following the adoption of its RECLAIM program. We disagree with the BCCAAG's position in this regard.

Comment #25: BCCAAG commented that according to their forecast for the 2000–2004 time frame, resource supply and demand for construction labor, design engineering staff, specialized labor, and Selective Catalytic Reduction (SCR) catalyst supply for the H/GA area exceed available capacities.

Response to comment #25: It is not within the scope of this rulemaking to forecast resource and market demand availability of a certain industrial sector. However, historically the market develops additional supply when there

is increased demand. Regulated units in the H/GA area can come into compliance in several ways, not all of which rely on physical installation of additional controls. Moreover, the TNRCC has extended the compliance deadlines for certain units, which is expected to mitigate any potential inadequate capacity problems. For objectivity and public record purposes, it appears that surveys cited as reference by the commenter are conducted or sponsored, in part, by the industry groups.

We refer the commenter to 26 Texas Register 524, published on January 12, 2001, for a detailed explanation of the level of NO_x control. The EPA's role in reviewing SIP submittals is to approve state choices, provided that they meet the criteria of the Clean Air Act. Federal inquiry into the economic reasonableness of state action is not allowed under the Clean Air Act (see, *Union Electric Co., v. EPA*, 427 U.S. 246, 255–266 (1976); 42 U.S.C. 7410(a)(2)) other than for purposes of evaluating the reasonableness and availability of alternatives for purposes of a waiver of Federal preemption. The State has submitted information indicating that the administrative requirements of Texas law have been met. We defer to the State analysis until such time as a State Court has determined otherwise.

Comment #26: BCCAAG commented that the proposed rules will decrease the production of ethylene and polyethylene plants during the 2003–2004 implementation period and will cause loss of sales/income.

Response to comment #26: We are not aware of any NO_x rules in the country that have tailored their compliance deadlines or emissions reduction plans to fit operation of one certain industrial sector (ethylene and polyethylene plants) or specific plants' long run maintenance or shutdown schedules. Any such accommodation in the rule could be interpreted as lowering the bar of emission control or extending special treatment to those specific plants. What seems to be missing from the commenter's statement of concern over production/sales losses from ethylene and polyethylene plants is the health care and welfare costs associated with failure to install the proposed controls. The fact that the construction/reconstruction and installation of a control device may cause temporary delay in production rate does not constitute grounds for exempting that source or subjecting the source to a less stringent control requirement than the regulations would otherwise require. We support the State's proposed

implementation deadline and emission limitations and disagree with the commenter's position in this regard.

Comment #27: BCCAAG commented that the State has not weighed and analyzed costs and technical feasibility of the control options for utility boilers, gas turbines, heaters and furnaces, duct burners, internal combustion (IC) engines, and ICI boilers. The commenter proposes a NO_x standard comparable to those deployed in South Coast Air Quality Management District (SCAQMD).

Response to comment #27: On the subject of technical feasibility analysis we offer the following: The H/GA area is classified as a severe-17 ozone nonattainment area and is the largest emitter of NO_x emissions in the southern part of the country, a larger emitter in amount than the Los Angeles area. See <http://www.epa.gov/air/data/netemis.html>. The ozone control strategy in the H/GA area is driven more by NO_x control measures than VOC. Although the SCAQMD is normally the trend-setter in the field of air pollution control in the States, some of the point source NO_x standards the commenter refers to were set in the 1988 to 1991 time era. Air pollution control technology is a dynamic and evolving process. A decade ago, a concentration based NO_x limit in single digit ppm was impracticable; while with today's technology and advancements in process control techniques a concentration based NO_x limit in single digit ppm has become practicable and common. What used to be the state-of-art control technique a decade or so ago, as set by the SCAQMD, may not be so in the air pollution control industry now. Additionally, operational flexibility and emission cap and trading provisions built in the NO_x rules serve as viable options that a source or operator can take advantage of. We believe that advances in air pollution control technology combined with the Chapter 117 rule operational flexibility, and with emission cap/trading, should enable a source or operator to meet the proposed point source NO_x emission limitations. With regard to the cost and economic feasibility of the control requirements, actions such as the approval of a SIP revision which merely approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law are not subject to economic impact analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The EPA's role in reviewing SIP submittals is to approve state choices, provided that they meet the criteria of the Clean Air Act. Federal inquiry into

the economic reasonableness of state action is not allowed under the Clean Air Act (see, *Union Electric Co., v. EPA*, 427 U.S. 246, 255–266 (1976); 42 U.S.C. 7410(a)(2)) other than for purposes of evaluating the reasonableness and availability of alternatives for purposes of a waiver of Federal preemption. The State has submitted information indicating that the administrative requirements of Texas law have been met. We defer to the State analysis until such time as a State Court has determined otherwise. Furthermore, we refer the commenter to 26 Texas Register 524, published on January 12, 2001, for a detailed explanation of the level of NO_x control. We support the State's proposed NO_x emission limitations and therefore, disagree with the commenter's position on costs and technical feasibility of the emission controls from point sources of NO_x.

Comment #28: BCCAAG commented that introduction of post combustion technology with ammonia usage could increase ammonia emissions and concentrations in the H/GA area.

Response to comment #28: We can understand and do appreciate BCCAAG's concern about the potential for increase in ammonia emissions in the H/GA area. Historically many facilities in Europe, Japan, and the United States have used injection of this reagent as a method of control to reduce NO_x or SO_x emissions from their combustion sources. As material contained in the docket indicates if control equipment is properly operated, there would be no excess ammonia emissions. As a regulatory safeguard, 30 TAC Chapter 117 does set short term emission limits for ammonia associated with operation of combustion sources and their associated control devices. See 117.105(j), 117.106(d)(1)(B)(2), 117.205(g), and 117.206(e)(2). We support the State's proposed emission limitations and; therefore, disagree with the commenter's position in this regard.

Comment #29: BCCAAG commented that storage, handling, and transportation of ammonia is risky.

Response to comment #29: We can understand and do appreciate BCCAAG's concern about potential risk associated with the storage and handling of ammonia in the H/GA area. As a regulatory safeguard, 30 TAC Chapter 117 does set short term emission limits for ammonia associated with operation of combustion sources and their associated control devices. See 117.105(j), 117.106(d)(1)(B)(2), 117.205(g), and 117.206(e)(2). The commenter mentions that annually millions of pounds of ammonia would have to be transported, handled, stored,

and used throughout the H/GA area. We want to bring to the commenter's attention that many more millions of pounds of petroleum related chemicals are transported, handled, stored, and used throughout the H/GA area in association with activities related to some of the commenter's constituents, every year. Using a similar analogy, gasoline is a volatile, flammable solvent and is composed of potentially carcinogenic chemicals. Some of the BCCAAG constituents in the H/GA area are involved in the business of refining and producing gasoline and petrochemical solvents. Millions of Americans drive gasoline-fueled engines to and from work/home every day. We do not believe that it follows that these people will need to cease their daily

driving activities due to the risk associated with the storage and handling of gasoline. We support the State's proposed emission limitations and therefore disagree with the commenter's position in this regard.

Comment #30: BCCAAG commented that there will be instances that shutdown of equipment may have to be considered to meet the desired NO_x emission reductions.

Response to comment #30: We agree that there may be instances that the shutdown of marginal (economically speaking) existing equipment will have to be considered. The surplus credit associated with these shutdowns could be used in emission trading for financial gains by the source or operator. The source also has the option to consolidate

the emissions from marginal equipment with other point sources and utilize a combined control technique, or to obtain emission allowances. Both of these options have been built into the Chapter 117 rules.

6. What Are the NO_x Emission Specifications for Point Sources of NO_x, in the H/GA Area Based Upon the December 22, 2000, SIP Revision, That We Are Approving?

This rule revision requires reductions of NO_x emissions from point sources in the H/GA ozone nonattainment area. The following table contains a summary of the NO_x emission specifications for attainment demonstration purposes that we are approving for point sources in the H/GA.

TABLE III.—AFFECTED SOURCES AND NO_x EMISSION SPECIFICATIONS FOR ATTAINMENT DEMONSTRATION IN THE H/GA

| Source | NO _x emission specification for attainment demonstration |
|-----------------------------------|---|
| Utility Boilers | 0.010–0.060 lb/MMBtu. |
| Turbines and Duct Burners | 0.015–0.150 lb/MMBtu. |
| Heaters and Furnaces | 0.010–0.036 lb/MMBtu. |
| Internal Combustion Engines | 0.045–0.133 lb/MMBtu or 0.17–0.50 gram/hp-hr. |
| Industrial Boilers | 0.010–0.030 lb/MMBtu. |
| Coke-fired Boilers | 0.057 lb/MMBtu. |
| Wood Fuel-fired Boilers | 0.046 lb/MMBtu. |
| Rice hull-fired Boilers | 0.089 lb/MMBtu. |
| Oil-fired Boilers | 2.0 lb/1,000 gallons of oil burned. |

We are approving the above-listed NO_x emissions specifications for point sources of NO_x in the H/GA as a part of the Texas 1-hour ozone SIP under Part D of the Act because Texas is relying on the NO_x control measures to demonstrate attainment of the 1-hour

ozone standard in the H/GA nonattainment area.

7. What Is the Compliance Schedule for Point Sources of NO_x, in the H/GA Area Based Upon the December 22, 2000, SIP Revision, That We Are Approving?

The following table contains a summary of the affected sources and

their compliance schedules for attainment demonstration purposes that we are approving for point sources in the H/GA.

TABLE IV.—AFFECTED SOURCES OF NO_x AND COMPLIANCE SCHEDULES

| Sources | Compliance schedule | Additional information |
|--|----------------------|---|
| Utility Electric Generation | March 31, 2003 | Investor-owned; first 46% of total required NO _x reductions. |
| Utility Electric Generation | March 31, 2004 | Investor-owned; the next 46% required NO _x reductions. |
| Utility Electric Generation | March 31, 2007 | Investor-owned; final required NO _x reductions. |
| Industrial, Commercial, and Institutional Combustion Sources. | March 31, 2004 | First 44% of required NO _x reductions. |
| Industrial, Commercial, and Institutional Combustion Sources. | March 31, 2005 | Next 45% of required NO _x reductions. |
| Industrial, Commercial, and Institutional Combustion Sources. | March 31, 2007 | Final NO _x reductions. |
| Boilers, Process Heaters, and Stationary Engines at Minor Sources. | March 31, 2005 | In cap and trade program. |
| Boilers, Process Heaters, and Stationary Engines at Minor Sources. | March 31, 2005 | Not in cap and trade program. |

We are of the opinion that the above listed compliance dates and time-table combined with the cap and trade provisions of the rule offer operational

flexibility to the affected point sources in the H/GA. We are approving the above-listed compliance dates for point sources of NO_x in the H/GA as a part

of the Texas 1-hour ozone SIP under Part D of the Act because Texas is relying on the NO_x control measures to demonstrate attainment of the 1-hour

ozone standard in the H/GA nonattainment area.

8. What Are the NO_x Emissions Reductions for Point Sources of NO_x, in the H/GA Area Based Upon the December 22, 2000, SIP Revision, That We Are Approving?

This rulemaking will control/reduce NO_x emissions in the H/GA area in two

phases or Tiers. We will refer to these two emission reduction phases as Tier I and Tier II Reductions. You can find a summary of the affected sources and their NO_x emission reductions for attainment demonstration purposes, that we are approving for point sources in the H/GA area, in the following table.

TABLE V.—AFFECTED POINT SOURCES, 1997 EMISSIONS, AND THEIR EMISSION REDUCTIONS FOR THE H/GA

| Sources | 1997 NO _x emissions, tons per day (tpd) | Tier I + Tier II reductions, (tpd) |
|------------------------------------|--|------------------------------------|
| Utility Boilers | 196.44 | 184 |
| Turbines and Duct Burners | 155.65 | 141 |
| Process Heaters and Furnaces | 110.12 | 97 |
| Internal Combustion Engines | 86.37 | 75 |
| Industrial Boilers | 85.98 | 79 |
| Other | 32.99 | 19 |
| Overall Point Sources | 667.55 | 595 |

The combined NO_x emission reductions of Tier I and Tier II in the rulemaking will be 595 tpd or 89 percent, when compared to the 1997 emission levels. We are approving the overall NO_x point source reductions in the H/GA as a part of the Texas 1-hour ozone SIP under Part D of the Act because Texas is relying on the NO_x

control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

9. What Are the NO_x Emission Specifications, for Stationary Diesel Engines or Stationary Dual-Fuel Engines, That We Are Approving?

This rule revision requires reductions of NO_x emissions from stationary diesel

engines or stationary dual-fuel engines in the H/GA area. The following table contains a summary of the NO_x emission specifications for stationary diesel engines in the H/GA area.

TABLE VI.—AFFECTED SOURCES AND NO_x EMISSION SPECIFICATIONS FOR STATIONARY DIESEL ENGINES OR STATIONARY DUAL-FUEL ENGINES IN THE H/GA AREA

| Source | NO _x emission specification |
|--|--|
| Diesel engines in service after October 1, 2001: not modified, reconstructed, or relocated on or after October 1, 2001 .. | 11.0 gram/hp-hr. |
| Rated less than 11 hp: modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2004 ... | 7.0 gram/hp-hr. |
| Rated less than 11 hp: modified, reconstructed, or relocated on or after October 1, 2004 | 5.0 gram/hp-hr. |
| 11 hp ≤ rated < 25 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2004. | 6.3 gram/hp-hr. |
| 11 hp ≤ rated < 25 hp: installed, modified, reconstructed, or relocated on or after October 1, 2004 | 5.0 gram/hp-hr. |
| 25 hp ≤ rated < 50 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2003. | 6.3 gram/hp-hr. |
| 25 hp ≤ rated < 50 hp: installed, modified, reconstructed, or relocated on or after October 1, 2003 | 5.0 gram/hp-hr. |
| 50 hp ≤ rated < 100 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2003. | 6.9 gram/hp-hr. |
| 50 hp ≤ rated < 100 hp: installed, modified, reconstructed, or relocated on or after October 1, 2003 | 5.0 gram/hp-hr. |
| 50 hp ≤ rated < 100 hp: installed, modified, reconstructed, or relocated on or after October 1, 2007 | 3.3 gram/hp-hr. |
| 100 hp ≤ rated < 175 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2002. | 6.9 gram/hp-hr. |
| 100 hp ≤ rated < 175 hp: installed, modified, reconstructed, or relocated on or after October 1, 2002, but before October 1, 2006. | 4.5 gram/hp-hr. |
| 100 hp ≤ rated < 175 hp: installed, modified, reconstructed, or relocated on or after October 1, 2006 | 2.8 gram/hp-hr. |
| 175 hp ≤ rated < 300 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2002. | 6.9 gram/hp-hr. |
| 175 hp ≤ rated < 300 hp: installed, modified, reconstructed, or relocated on or after October 1, 2002, but before October 1, 2005. | 4.5 gram/hp-hr. |
| 175 hp ≤ rated < 300 hp: installed, modified, reconstructed, or relocated on or after October 1, 2005 | 2.8 gram/hp-hr. |
| 300 hp ≤ rated < 600 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2005. | 4.5 gram/hp-hr. |
| 300 hp ≤ rated < 600 hp: installed, modified, reconstructed, or relocated on or after October 1, 2005 | 2.8 gram/hp-hr. |
| 600 hp ≤ rated < 750 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2005. | 4.5 gram/hp-hr. |
| 600 hp ≤ rated < 750 hp: installed, modified, reconstructed, or relocated on or after October 1, 2005 | 2.8 gram/hp-hr. |
| Rated ≥ 750 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2005. | 6.9 gram/hp-hr. |

TABLE VI.—AFFECTED SOURCES AND NO_x EMISSION SPECIFICATIONS FOR STATIONARY DIESEL ENGINES OR STATIONARY DUAL-FUEL ENGINES IN THE H/GA AREA—Continued

| Source | NO _x emission specification |
|--|--|
| Rated ≥ 750 hp: installed, modified, reconstructed, or relocated on or after October 1, 2005 | 4.5 gram/hp-hr. |

We are of the opinion that these emission specifications are in agreement with those found in Code of Federal Regulations (CFR), Title 40, section 89.112, and EPA's Document Number 420-R-98-016 dated August 1998, entitled "Final Regulatory Impact Analysis: Control of Emissions from Nonroad Diesel Engines." We are also of the opinion that these NO_x emission specifications will contribute to the attainment of the 1-hr ozone standard in the H/GA area. We are approving these stationary diesel engines or stationary dual-fuel engines rule revisions under Part D of the Act because Texas is relying on these NO_x reductions to demonstrate attainment of the 1-hour ozone standard in the H/GA 1-hr ozone nonattainment area.

10. What Is the Proposed Compliance Schedule Date for Stationary Diesel Engines in the H/GA Area Based on the May 30, 2001, SIP Revision?

The compliance date for stationary diesel engines and stationary dual-fuel engines in the H/GA area is April 1, 2002. See sections 117.520 and 117.534 of the proposed rule. We consider the April 1, 2002, compliance date for stationary diesel engines and dual-fuel engines, in the H/GA area, to be as expeditious as practicable. We are approving these stationary diesel engines or stationary dual-fuel engines compliance schedules under Part D of the Act because Texas is relying on these NO_x reductions to demonstrate attainment of the 1-hour ozone standard in the H/GA 1-hr ozone nonattainment area.

11. What Are the NO_x Emissions Reductions for Stationary Diesel Engines in the H/GA Area Based on the May 30, 2001, SIP Revision, That We Are Approving?

The estimated NO_x emission reductions attributed to the stationary diesel engines or stationary dual-fuel engines that we are approving is 1.00 tpd.

12. What Are the NO_x Emissions Specifications for Point Sources of NO_x in the H/GA Area Based on the May 30, 2001, SIP Revision, That We Are Approving?

The following table contains a summary of the NO_x emission specifications for attainment demonstration purposes that we are approving for point sources in the H/GA.

TABLE VII.—AFFECTED SOURCES AND NO_x EMISSION SPECIFICATIONS FOR ATTAINMENT DEMONSTRATION IN THE H/GA

| Source | NO _x Emission Specification for Attainment Demonstration |
|---|---|
| Utility Boilers, Gas-fired | 0.020 lb/MMBtu. |
| Utility Boilers, Coal-fired or Oil-fired | 0.040 lb/MMBtu. |
| Auxiliary Steam Boilers | 0.010–0.036 lb/MMBtu. |
| Stationary Gas Turbines + Duct Burners in Turbine Exhaust | 0.015–0.150 lb/MMBtu. |

We are of the opinion that NO_x emission specifications listed in Table VII will contribute to attainment of the 1-hr ozone standard in the H/GA area. We are approving the above-listed NO_x emissions specifications for affected point sources of NO_x in the H/GA as a part of the Texas 1-hour ozone SIP under Part D of the Act because Texas is relying on the NO_x control measures

to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

13. What Is the Compliance Schedule For Utility Electric Generation Point Sources of NO_x in the H/GA Area Based on the May 30, 2001, SIP Revision, That We Are Approving?

The following table contains a summary of the time-table/ compliance schedule for the affected utility electric generation point sources of NO_x in the H/GA that we are approving.

TABLE VIII.—AFFECTED SOURCES OF NO_x IN THE H/GA AND COMPLIANCE SCHEDULES

| Sources | Compliance schedule | Additional information |
|-----------------------------------|----------------------|--|
| Utility Electric Generation | March 31, 2003 | At least 47% of total required NO _x reductions. |
| Utility Electric Generation | March 31, 2004 | At least 95% of total required NO _x reductions. |
| Utility Electric Generation | March 31, 2007 | Demonstrate compliance with system cap limits of 117.108. |

We are of the opinion that the above-listed compliance dates and time-table for affected sources offer operational flexibility to the rule. We are approving

the above-listed compliance dates for affected point sources of NO_x in the H/GA as a part of the Texas 1-hour ozone SIP under Part D of the Act because

Texas is relying on the NO_x control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

14. What Are the NO_x Emissions Specifications in the ICI Source Category for Attainment Demonstration Within the H/GA Area, Based on the May 30, 2001, SIP Revision, That We Are Approving?

source category within the H/GA for attainment demonstration purposes in the H/GA in the following table.

You can find proposed NO_x emissions specifications for the ICI

TABLE IX.—AFFECTED INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL COMBUSTION SOURCES AND THEIR NO_x EMISSION SPECIFICATIONS FOR ATTAINMENT DEMONSTRATION IN THE H/GA

| Source | NO _x Emission specification for attainment demonstration |
|--|---|
| Stationary, reciprocating internal combustion engines: gas-fired rich-burn firing on landfill gas | 0.60 gram/hp-hr. |
| Stationary, reciprocating internal combustion engines: gas-fired rich-burn not firing on landfill gas. | 0.17 gram/hp-hr. |
| Stationary, reciprocating internal combustion engines: gas-fired lean-burn firing on landfill gas ... | 0.60 gram/hp-hr. |
| Stationary, reciprocating internal combustion engines: gas-fired lean-burn not firing on landfill gas. | 0.50 gram/hp-hr. |
| Dual fuel engines with initial start of operation on or before December 31, 2000 | 5.83 gram/hp-hr. |
| Dual fuel engines with initial start of operation after December 31, 2000 | 0.50 gram/hp-hr. |
| Gas-fired boilers | 0.010—0.036 lb/MMBtu. |
| Fluid catalytic cracking units. Includes CO boilers, CO furnaces, and catalyst regenerator vents | 13 ppm @ zero percent O ₂ , dry basis. |
| Boilers and industrial furnaces | 0.015—0.030 lb/MMBtu. |
| Coke-fired boilers | 0.057 lb/MMBtu. |
| Wood fuel-fired boilers | 0.046 lb/MMBtu. |
| Rice hull-fired boilers | 0.089 lb/MMBtu. |
| Oil-fired boilers | 2.0 lb/1,000 gallons of oil burned. |
| Process heaters | 0.010—0.036 lb/MMBtu. |
| Stationary gas turbines | 0.015—0.15 lb/MMBtu. |
| Duct burners in turbine exhaust ducts | 0.015 lb/MMBtu. |
| Pulping liquor recovery furnaces | 0.050 lb/MMBtu or 1.08 lb/ADTP. |
| Lime kilns | 0.66 lb/ton of CaO. |
| Lightweight aggregate kilns | 0.76 lb/ton of product. |
| Metallurgical heat treat furnaces | 0.087 lb/MMBtu. |
| Metallurgical reheat furnaces | 0.062 lb/MMBtu. |
| Incinerators | 0.030 lb/MMBtu. |

We are approving the above-listed NO_x emissions specifications for point sources of NO_x in the H/GA as a part of the Texas 1-hour ozone SIP under Part D of the Act because Texas is relying on the NO_x control measures to demonstrate attainment of the 1-hour

ozone standard in the H/GA nonattainment area.

15. What Is the Compliance Schedule for Affected ICI Sources of NO_x in the H/GA Area Based on the May 30, 2001, SIP Revision That We Are Approving?

This rule revision offers a phased-in approach concerning the emission

reductions and compliance schedule for point sources of NO_x in the H/GA area. The following table contains a summary of the time-table/compliance schedule for the affected ICI sources of NO_x in the H/GA area.

TABLE X.—AFFECTED ICI SOURCES OF NO_x IN THE H/GA AREA AND COMPLIANCE SCHEDULES

| Sources | Compliance schedule | Additional information |
|-------------------|----------------------|--|
| ICI sources | March 31, 2004 | At least 39% of total required NO _x reductions. |
| ICI sources | March 31, 2005 | At least 67% of total required NO _x reductions. |
| ICI sources | March 31, 2006 | At least 78% of total required NO _x reductions. |
| ICI sources | March 31, 2007 | Demonstrate compliance with system cap limits of 117.210. |

We are approving the above-listed compliance dates for affected ICI sources of NO_x in the H/GA as a part of the Texas 1-hour ozone SIP under Part D of the Act because Texas is relying on the NO_x control measures to demonstrate attainment of the 1-hour

ozone standard in the H/GA nonattainment area.

16. What Are the NO_x Emissions Reductions Based on the May 30, 2001, SIP Revision, That We Are Approving?

This rulemaking will control/reduce NO_x emissions in the H/GA area in two

phases or Tiers. We will refer to these two emission reduction phases as Tier I and Tier II Reductions. The following Table contains a summary of the 1997 NO_x emissions and the May 30, 2001, emission reductions for each point source category in the H/GA area that we are approving.

TABLE XI.—AFFECTED POINT SOURCES, 1997 EMISSIONS, AND PROPOSED EMISSION REDUCTIONS FOR THE H/GA

| Sources | 1997 NO _x emissions, tons per day (tpd) | Tier I + Tier II reductions, (tpd) |
|------------------------------------|--|------------------------------------|
| Utility Boilers | 196.44 | 176 |
| Turbines and Duct Burners | 155.65 | 141 |
| Process Heaters and Furnaces | 110.12 | 97 |
| Internal Combustion Engines | 86.37 | 77 |
| Industrial Boilers | 85.98 | 79 |
| Other | 32.99 | 19 |
| Overall Point Sources | 667.55 | 588 |

The combined NO_x emission reductions of Tier I and Tier II in this SIP revision will be 588 tpd or 88 percent, when compared to the 1997 emission levels. The change in overall point sources NO_x reductions in Table XI, as compared with that of Table V in this document, is due to revisions to the requirements of subsections 117.106(c)(1) and 117.206(c)(9)(D).

17. When Did the State Adopt the Final Version of the Rule for Point Sources of NO_x in the H/GA Area?

The State adopted the final version of the rule for point sources of NO_x in the H/GA area on September 26, 2001.

18. Is There a Substantial Difference Between the State's Proposed and Final Versions of the Rule for Point Sources of NO_x in the H/GA Area?

For parallel processing purposes, there is no substantial difference between the State's proposed and final versions of the rule for point sources of NO_x in the H/GA area with regard to actions number three, four, and five of this document. We did not review actions number one and two through the parallel processing mechanism. There is no substantial difference between the State's proposed and final versions of the rule for point sources of NO_x in the H/GA area with regard to actions number one and two of this document.

19. What Are NO_x?

Nitrogen oxides belong to the group of criteria air pollutants. The NO_x result from burning fuels, including gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ozone or smog, and are also major components of acid rain.

20. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but

unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time.

21. What Are Definitions of Major Sources for NO_x?

Section 302 of the Act generally defines "major stationary source" as a facility or source of air pollution which emits, when uncontrolled, 100 tons per year (tpy) or more of air pollution. This general definition applies unless another specific provision of the Act explicitly defines major source differently.

According to section 182(d) of the Act, a major source in a severe nonattainment area is a source that emits, when uncontrolled, 25 tpy or more of NO_x. The H/GA area is a severe ozone nonattainment area, so the major source size for the H/GA area is 25 tpy or more, when uncontrolled. This rulemaking will regulate NO_x emissions from major stationary sources in the H/GA area.

22. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories,

monitoring networks, and modeling demonstrations.

23. What Does Federal Approval of a SIP Mean to Me?

A State may enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

24. What Areas in Texas Will the Stationary Diesel Engines or Stationary Dual-Fuel Engines Rule Affect That We Are Approving Based on the May 30, 2001, SIP Revision Affect?

The following table contains a list of counties affected by this SIP revision concerning the stationary diesel engines or dual-fuel engines that we are parallel processing for approval.

TABLE XII.—RULE LOG NUMBER AND AFFECTED AREAS FOR TEXAS NO_x SIP

| Rule log | Affected areas |
|---|---|
| 2001-007B-117-AI Stationary diesel engines and dual-fuel engines provisions. | Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties. |

If you are in one of these Texas counties, you should refer to the Texas NO_x rules to determine if and how today's action will affect you.

25. What Areas in Texas Will Be Affected by the Rule for Point Sources of NO_x, That We Are Approving Based on the May 30, 2001, SIP Revision?

The following table contains a list of counties affected by this SIP revision concerning point sources of NO_x that we are parallel processing for approval.

TABLE XIII.—RULE LOG NUMBER AND AFFECTED AREAS FOR TEXAS NO_x SIP

| Rule log No. | Affected areas |
|---|--|
| 2001-007B-117-AI ICI and electric utility sources. | Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties |

Administrative Requirements

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 proposed 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 (Public Law 104-4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will 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), because it 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 Clean Air Act. This rule also is not subject to Executive Order 13045 (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 Clean Air Act. 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 Clean Air Act. 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. The rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings.” 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Nitrogen oxides, Nonattainment, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 15, 2001.

Gregg A. Cooke,
Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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. In § 52.2270 the entry for Chapter 117 in the table in paragraph (c) is amended as follows:

a. Under Subchapter A, revising the entry for section 117.10;

b. Under Subchapter B, revising the entries for sections 117.101, 117.103, 117.105, 117.106, 117.107, 117.108, 117.111, 117.113, 117.116, 117.119, 117.121, 117.138, 117.201, 117.203, 117.205, 117.206, 117.207, 117.208, 117.211, 117.213, 117.216, 117.219, and 117.221, and adding new entries for sections 117.110, 117.114, 117.210, and 117.214;

c. Under Subchapter D, adding new entries for sections 117.471, 117.473, 117.475, 117.478, and 117.479;

d. Under Subchapter E, revising entries for sections 117.510, 117.520, and 117.570, and adding a new entry for section 117.534. The revisions and additions read as follows:

§ 52.2270 Identification of plan.

* * * * *
(c) * * *

EPA APPROVAL REGULATIONS IN THE TEXAS SIP

| State citation | Title/subject | State submittal/approval date | EPA approval date | Explanation |
|--|---------------|-------------------------------|--|-------------|
| * | * | * | * | * |
| Chapter 117 (Reg 7)—Control of Air Pollution From Nitrogen Compounds Subchapter A | | | | |
| Section 117.10 | Definitions | 09/26/2001 | [Insert 11-14-01 Federal Register cite.] | |

EPA APPROVAL REGULATIONS IN THE TEXAS SIP—Continued

| State citation | Title/subject | State submittal/approval date | EPA approval date | Explanation |
|--|---|-------------------------------|--|-------------|
| Subchapter B—Division 1—Utility Electric Generation | | | | |
| Section 117.101 | Applicability | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| Section 117.103 | Exemptions | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| * | * | * | * | * |
| Section 117.105 | Emission Specifications | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| Section 117.106 | Emission Specifications for Attainment Demonstrations. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| Section 117.107 | Alternative System-Wide Emission Specifications. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| Section 117.108 | System Cap | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| * | * | * | * | * |
| Section 117.110 | Change Ownership—System Cap | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | New. |
| Section 117.111 | Initial Demonstration of Compliance. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| Section 117.113 | Continuous Demonstration of Compliance. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| Section 117.114 | Emission Testing and Monitoring for the Houston Galveston Attainment Demonstration. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | New. |
| * | * | * | * | * |
| Section 117.116 | Final Control Plan Procedures for Attainment Demonstration Emission Specifications. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| * | * | * | * | * |
| Section 117.119 | Notification, Record keeping, and Reporting Requirements. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| Section 117.121 | Alternative Case Specific Specifications. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| * | * | * | * | * |
| Section 117.138 | System Cap | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| * | * | * | * | * |
| Section 117.201 | Applicability | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |

EPA APPROVAL REGULATIONS IN THE TEXAS SIP—Continued

| State citation | Title/subject | State submittal/approval date | EPA approval date | Explanation |
|-----------------|---|-------------------------------|--|-------------|
| Section 117.203 | Exemptions | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| Section 117.205 | Emission Specifications for Reasonably Available Control Technology (RACT). | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| Section 117.206 | Emission Specifications for Attainment Demonstrations. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| Section 117.207 | Alternative Plant-Wide Emission Specifications. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| Section 117.208 | Operating Requirements | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| * | * | * | * | * |
| Section 117.210 | System Cap | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | New. |
| Section 117.211 | Initial Demonstration of Compliance. | 09/26/2001 | 11–14–01 | |
| Section 117.213 | Continuous Demonstration of Compliance. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| Section 117.214 | Emission Testing and Monitoring for the Houston Galveston Attainment Demonstration. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | New. |
| * | * | * | * | * |
| Section 117.216 | Final Control Plan Procedures for Attainment Demonstration Emission Specifications. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| * | * | * | * | * |
| Section 117.219 | Notification, Recordkeeping, and Reporting Requirements. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| Section 117.221 | Alternative Case Specific Specifications. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| * | * | * | * | * |
| Section 117.471 | Applicability | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | New. |
| Section 117.473 | Exemptions | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | New. |
| Section 117.475 | Emission Specifications | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | New. |
| Section 117.478 | Operating Requirements | 09/26/2001 | 11–14–01 | New. |
| Section 117.479 | Monitoring, Recordkeeping, and Reporting Requirements. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | New. |

EPA APPROVAL REGULATIONS IN THE TEXAS SIP—Continued

| State citation | Title/subject | State submittal/approval date | EPA approval date | Explanation |
|-----------------------|---|-------------------------------|--|-------------|
| * * * * * | * * * * * | * * * * * | * * * * * | * * * * * |
| Section 117.510 | Compliance Schedule for Utility Electric Generation in Ozone Nonattainment Areas. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| * * * * * | * * * * * | * * * * * | * * * * * | * * * * * |
| Section 117.520 | Compliance Schedule for Industrial, Commercial, and Institutional, Combustion Sources in ozone Nonattainment Areas. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| * * * * * | * * * * * | * * * * * | * * * * * | * * * * * |
| Section 117.534 | Compliance Schedule for Boilers, Process Heaters, Stationary Engines, and Gas Turbines at Minor Sources. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | New. |
| * * * * * | * * * * * | * * * * * | * * * * * | * * * * * |
| Section 117.570 | Use of Emissions Credits for Compliance. | 09/26/2001 | [Insert 11–14–01 Federal Register cite.] | |
| * * * * * | * * * * * | * * * * * | * * * * * | * * * * * |

[FR Doc. 01–27584 Filed 11–13–01; 8:45 am]
 BILLING CODE 6560–5–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX 28–1–7538; FRL–7092–4]

Approval and Promulgation of Implementation Plans; Texas; Houston/Galveston Ozone Nonattainment Area Vehicle Miles Traveled Offset Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final action, the EPA is approving, as part of the Texas State Implementation Plan (SIP) for the Houston/ Galveston Ozone Nonattainment Area (HGA), the Vehicle Miles Traveled (VMT) Offset Plan to offset any growth in emissions from growth in VMT, or number of vehicle trips in the Houston/ Galveston severe ozone nonattainment area. This is part of the State’s effort to attain the National Ambient Air Quality Standard (NAAQS) for ozone. The State demonstrated that emissions from increases in VMT or

numbers of vehicle trips within HGA will not rise above an established ceiling by 2007; thereby not requiring additional transportation control measure (TCM) offsets to prevent an increase in VMT above the ceiling. The requirements for the VMT Offset plan to be consistent with the State’s demonstration of Reasonable Further Progress (RFP) and attainment are addressed in a corresponding action for the HGA area taken and published separately in this **Federal Register**. This action approves the proposed approval published on July 10, 2001 (66 FR 35920). Comments made on the direct final rule, published on July 10, 2001 (66 FR 35903) and withdrawn on September 4, 2001 (66 FR 46220), are addressed later in this action. This action is being taken under sections 110 and 182 of the Federal Clean Air Act, as amended (the Act, or CAA).

DATES: This final rule is effective on December 14, 2001.

ADDRESSES: Copies of the relevant material for this action are available for inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2377.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Brooke M. Ivener at (214) 665–7362 or Mr. Bill Deese at (214) 665–7253, Air Planning Section (6PD–L), EPA Region 6, Suite 700, 1445 Ross Avenue, Dallas, Texas 75202–2733.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means EPA.

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1. What Are We Approving?

The EPA is approving a new SIP revision for VMT Offset submitted by the State on May 17, 2000. Specifically, we are approving the VMT Offset SIP, submitted by the State on August 25, 1997 and with minor, non-substantive revisions submitted on May 17, 2000. For information regarding our analysis