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**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2013-0542; FRL-9930-44-Region-6]**

**Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review State Implementation Plan; Flexible Permit Program**

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is fully approving revisions to the Texas New Source Review (NSR) State Implementation Plan (SIP) to establish the Texas Minor NSR Flexible Permits Program (FPP), submitted by the Texas Commission on Environmental Quality (TCEQ). The approval was predicated on the TCEQ meeting its commitment outlined in its letter dated December 9, 2013, to adopt certain minor clarifications to the Flexible Permit Program (FPP) by November 30, 2014. The TCEQ submitted the revised program rules to meet its commitment on July 31, 2014. The EPA is finalizing this action under section 110 of the Clean Air Act (CAA).

**DATES:** This final rule will be effective [insert date 30 days after publication in the Federal Register].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2013-0542. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available. E.g., Confidential Business Information or other information the disclosure of which is restricted by the statute. Certain other material such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Ms. Stephanie Kordzi, telephone 214-665-7520; e-mail address *kordzi.stephanie@epa.gov*.

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

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**I. Background**

On July 14, 2014, the EPA took final rulemaking action conditionally approving revisions to the Texas NSR SIP to establish the Texas Minor NSR Flexible Permits Program, submitted by the TCEQ. The EPA's proposed conditional approval was published in 79 FR 8368, February 12, 2014. The conditional approval was predicated on a commitment from TCEQ in a letter dated December 9, 2013, to adopt certain minor clarifications to the FPP by November 30, 2014. (79 FR 40666, July 14, 2014).

On September 12, 2014, Environmental Integrity Project, et al., filed a Petition for Review challenging the EPA conditional approval of the FPP with the Fifth Circuit Court of Appeals. The U.S. Department of Justice submitted the response to the Petition, Case No. 14-60649, for the EPA on March 2, 2015. The Appeal is on-going as of the date of publication of this notice.

On July 31, 2014, the TCEQ submitted revisions to the Texas NSR SIP. The rulemaking properly structured the rules within and according to the rulemaking requirements of the Texas Administrative Procedure Act and the Texas Administrative Code. The EPA proposed full approval of the FPP (79 FR 7875, December 31, 2014) based on its determination that the SIP revisions complied with section 110(k) of the Federal Clean Air Act (the Act or CAA) and was

consistent with the EPA's regulations and policies. These revisions supported this action to convert the approved conditional FPP to a fully approved FPP. The EPA reopened the public notice period for an additional 30 days (80 FR 21199, April 17, 2015), due to items being inadvertently omitted from the docket during the public notice period beginning December 31, 2014.

## **II. Response to Comments**

The EPA proposed an initial comment period of 30 days. We received comments from 3 organizations during the initial comment period as follows: the TCEQ, Baker Botts, and the Environmental Integrity Project (EIP) on behalf of the Environmental Justice Advocacy Services, Community in Power & Development Association, Citizens for Environmental Justice, Air Alliance Houston, Texas Campaign for the Environment, and the Texas Impact. All comments previously submitted under the first public notice for this action are being responded to as appropriate and the commenters were informed that they did not need to resubmit them during the reopened public notice period. The EPA did not receive any additional comments during the reopened public notice period. All comment letters can be found in their entirety in the docket for this rulemaking.

**Comment 1:** Baker Botts stated they supported EPA's proposed approval of the Texas FPP. They believe it complies with the federal Clean Air Act. Further they believe that flexible permits are an essential part of the Texas air quality permitting program and the program has contributed to marked and sustained improvements in Texas air quality. They submitted

information from TCEQ's web site which documents reductions in ozone and other pollutants in Texas.

**Response 1:** The EPA appreciates the support for our final approval. No changes were made to the final rule as a result of this comment.

**Comment 2:** The TCEQ concurs with the EPA's proposed determination that the TCEQ fulfilled its December 9, 2013, commitment to submit the FPP SIP revision. The TCEQ also concurs with EPA's proposed finding that the TCEQ has satisfied all the elements of the EPA's final conditional approval (79 FR 40666, July 14, 2014). The TCEQ submitted on July 31, 2014, the following rules: 30 TAC Sections 116.13, 116.710, 116.711(1), (2)(A)(B) and (C)(i) and (ii), (D) – (J), and (L) – (N); 116.715(a) – (e) and (f)(1) and (2)(B); 116.716; 116.717; 116.718; 116.721; and 116.765.

**Response 2:** The EPA appreciates the support for our final approval of the rule. No changes were made to the final rule as a result of this comment.

**Comment 3:** The EIP stated the following: "this full approval action is non-substantive, it is not the agency action we seek to, or intend to, challenge." EIP did resubmit their April 4, 2014, comments on the proposed conditional approval (Attachment A), and their January 27, 2015, Fifth Circuit Court of Appeals brief (Attachment B).

**Response 3:** The EIP did not submit comments on the substance of this action, which addressed the rules being properly structured within and according to the rulemaking requirements of the Texas Administrative Procedure Act and the Texas Administrative Code. The EPA addressed the April 4, 2014, comments that the EIP resubmitted in its response to

comments contained in the final conditional approval. (79 FR 40666, July 14, 2014). Further, the Brief of Respondent U.S. Environmental Protection Agency, Case No. 14-60649, filed on March 2, 2015, replies to the issues raised by EIP in its January 27, 2015, Fifth Circuit Court of Appeals brief. EPA is incorporating by reference the EPA's Reply Brief in this response to the EIP's resubmitted comments. It can be found in the Docket to this action.

### **III. When Is This Action Effective?**

The EPA has determined that today's final approval of the Texas FPP is subject to the requirement to delay a rule's effective date until 30 days after publication in 5 U.S.C. 553(d) of the APA; therefore, the rule , will become effective 30 days after publication.

### **IV. Final Action**

After careful consideration of submitted revisions to meet the requirements of the conditional approval and of the comments received and the responses to each comment provided above, and under section 110 of the Act, the EPA is finalizing our proposal to convert the conditional approval of the FPP to a full, final action. Further, we have found it complies with section 110(l) of the Act. We are making the following revisions to the Texas SIP:

- Revisions to 30 TAC Section 116.13 – Flexible Permit Definitions.
- Revisions to 30 TAC Section 116.710 – Applicability.
- Revisions to 30 TAC Section 116.711(1), (2)(A), (B) and (C)(i) and (ii), (D) – (J), and (L) – (N) - Flexible Permit Application.
- Revisions to 30 TAC Section 116.715(a) – (e) and (f)(1) and (2)(B) - General and

Special Conditions.

- Revisions to 30 TAC Section 116.716 – Emission Caps and Individual Emission Limitations.
- Revisions to 30 TAC Section 116.717 – Implementation Schedule for Additional Controls.
- Revisions to 30 TAC Section 116.718 – Significant Emission Increase.
- Revisions to 30 TAC Section 116.720 – Limitation of Physical and Operational Changes.
- Revisions to 30 TAC Section 116.721 – Amendments and Alterations.
- Revisions to 30 TAC Section 116.740(a) – Public Notice.
- Revisions to 30 TAC Section 116.750 – Flexible Permit Fee. Revisions to 30 TAC Section 116.765 – Compliance Schedule.

The EPA has determined that the revised rule satisfies the December 9, 2013, Commitment Letter which was submitted in a timely manner.

## **V. Incorporation by Reference**

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

**VI. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. See, 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT

DATE 60 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 30, 2015.

**Ron Curry,**

*Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

**PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart SS – Texas**

2. In §52.2270(c), the table titled “EPA Approved Regulations in the Texas SIP” is amended by revising the entries for sections 116.13, 116.710, 116.711, 116.715, 116.716, 116.717, 116.718, 116.720, 116.721, 116.740, 116.750, and 116.765 to read as follows:

**§52.2270 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA Approved Regulations in the Texas SIP**

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
* * * * *				
<b>Chapter 116 (Reg 6) – Control of Air Pollution by Permits for New Construction or Modification</b>				
<b>Subchapter A – Definitions</b>				
* * * * *				
Section 116.13	Flexible Permit Definitions	7/31/2014	[Insert Date of Publication in the Federal Register] [Insert Federal Register citation]	
* * * * *				
<b>Subchapter G – Flexible Permits</b>				
Section	Applicability	7/31/2014	[Insert Date of	

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
116.710			<b>Publication in the Federal Register]</b> <b>[Insert Federal Register citation]</b>	
Section 116.711	Flexible Permit Application	7/31/2014	<b>[Insert Date of Publication in the Federal Register]</b> <b>[Insert Federal Register citation]</b>	SIP includes 30 TAC 116.711(1), (2)(A), (B) and (C)(i) and (ii), (D) – (J), and (L) – (N)
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Section 116.715	General and Special Conditions	7/31/2014	<b>[Insert Date of Publication in the Federal Register]</b> <b>[Insert Federal Register citation]</b>	SIP includes 30 TAC 116.715(a) – (e) and (f)(1) and (2)(B)
Section 116.716	Emission Caps and Individual Emission Limitations	7/31/2014	<b>[Insert Date of Publication in the Federal Register]</b> <b>[Insert Federal Register citation]</b>	
Section 116.717	Implementation Schedule for Additional Controls	7/31/2014	<b>[Insert Date of Publication in the Federal Register]</b> <b>[Insert Federal Register citation]</b>	
Section 116.718	Significant Emission Increase	7/31/2014	<b>[Insert Date of Publication in the Federal Register]</b> <b>[Insert Federal Register]</b>	

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
			<b>citation]</b>	
Section 116.720	Limitation on Physical and Operational Changes	7/31/2014	<b>[Insert Date of Publication in the Federal Register] [Insert Federal Register citation]</b>	
Section 116.721	Amendments and Alterations	7/31/2014	<b>[Insert Date of Publication in the Federal Register] [Insert Federal Register citation]</b>	
* * * * *				
Section 116.740	Public Notice and Comment	7/31/2014	<b>[Insert Date of Publication in the Federal Register] [Insert Federal Register citation]</b>	SIP includes 30 TAC Section 116.740(a).
Section 116.750	Flexible Permit Fee	7/31/2014	<b>[Insert Date of Publication in the Federal Register] [Insert Federal Register citation]</b>	
* * * * *				
Section 116.765	Compliance Schedule	7/31/2014	<b>[Insert Date of Publication in the Federal Register] [Insert Federal Register citation]</b>	SIP includes 30 TAC Section 116.765(b) and (c).
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