



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2022-0307; FRL-10892-02-R6]

Air Plan Approval; Texas; Updates to Public Notice and Procedural Rules and Removal of Obsolete Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving portions of three revisions to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) on July 9, 2021, and January 21, 2022, that update the air permitting program by removing obsolete provisions and enhancing public notice requirements of the air permitting program. We are also making ministerial edits to correct several errors identified in the amendatory language for the Texas SIP.

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

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2022-0307. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Adina Wiley, EPA Region 6 Office, Air Permits Section, 214-665-2115, wiley.adina@epa.gov. Please call or e-mail the

contact listed above if you need alternative access to material indexed but not provided in the docket.

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

I. Background

The background for this action is discussed in detail in our April 21, 2023, proposal (88 FR 24518). In that document we proposed to approve portions of three revisions to the Texas SIP submitted by the TCEQ on July 9, 2021, and January 21, 2022. The first revision, adopted on April 22, 2020, submitted on January 21, 2022, updates internal cross-references and removes or replaces obsolete provisions identified during a routine review of the Texas permitting regulations. The second revision, adopted on June 9, 2021, submitted July 9, 2021, repeals obsolete permitting provisions, and makes necessary corresponding edits to other permitting provisions. The third revision, adopted on August 25, 2021, submitted January 21, 2022, enhances the public notice requirements of the air permitting program. As detailed in our proposed approval, we found that the submitted revisions are consistent with the CAA and the EPA’s regulations, policy, and guidance for permitting SIP requirements. We did not receive any comments regarding our proposal. Therefore, we are finalizing as proposed.

II. Final Action

Pursuant to section 110, of the Act, we are finalizing the submitted revisions to the Texas SIP that update the air permitting program by removing obsolete provisions and enhancing public notice by extending requirements for alternative language notices to notices for public meetings in certain circumstances.

We are approving the following revisions adopted on June 9, 2021, effective on July 1, 2021, submitted to the EPA on July 9, 2021:

- Revisions to 30 TAC Section 116.910 – Applicability,

- Revisions to 30 TAC Section 116.911 – Electric Generating Facility Permit Application,
- Revisions to 30 TAC Sections 116.920 – Public Participation for Initial Issuance,
- Revisions to 30 TAC Sections 116.1530 – Best Available Retrofit Technology (BART) Control Implementation, and
- Repeal of 30 TAC Sections 116.770 – 116.772, 116.774, 116.775, 116.777 – 116.781, 116.783, 116.785 – 116.788, and 116.790.

The EPA is approving the following revisions adopted on April 22, 2020, effective on May 14, 2020, submitted to the EPA on January 21, 2022:

- Revisions to 30 TAC Section 39.405 – General Notice Provisions,
- Revisions to 30 TAC Section 39.411 – Text of Public Notice,
- Revisions to 30 TAC Section 39.419 – Notice of Application and Preliminary Decision,
- Revisions to 30 TAC Section 39.420 – Transmittal of the Executive Director’s Response to Comments and Decision,
- Revisions to 30 TAC Section 39.601 - Applicability,
- Revisions to 30 TAC Section 39.603 – Newspaper Notice,
- Revisions to 30 TAC Section 55.154 – Public Meetings,
- Revisions to 30 TAC Section 55.156 – Public Comment Processing,
- Revisions to 30 TAC Section 101.306 – Emission Credit Use,
- Revisions to 30 TAC Section 116.111 – General Application, and
- Revisions to 30 TAC Section 116.112 – Distance Limitations.

The EPA is approving the following revisions adopted on August 25, 2021, effective September 16, 2021, submitted to the EPA on January 21, 2022:

- Revisions to 30 TAC Section 39.405 – General Notice Provisions,

- Revisions to 30 TAC Section 39.412 – Combined Notice for Certain Greenhouse Gases Permit Applications,
- Revisions to 30 TAC Section 39.418 – Notice of Receipt of Application and Intent to Obtain Permit,
- Revisions to 30 TAC Section 39.419 – Notice of Application and Preliminary Decision,
- New 30 TAC Section 39.426 – Alternative Language Requirements,
- Revisions to 30 TAC Section 39.602 – Mailed Notice,
- Revisions to 30 TAC Section 39.604 – Sign-Posting,
- Revisions to 30 TAC Sections 55.154 – Public Meetings, and
- Revisions to 30 TAC Sections 55.156 – Public Comment Processing.

The EPA is also correcting several errors identified in the amendatory language for the Texas SIP at 40 CFR 52.2270(c). The EPA is making these necessary, ministerial edits to the Texas SIP without notice and comment under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation. Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment is “unnecessary” and “contrary to the public interest” since the ministerial corrections update the amendatory language at 40 CFR 52.2270(c) to correctly reference prior EPA actions that were previously subject to notice and comment consistent with section 553 of the APA. The public benefits by having these updated citations.

- The EPA’s January 11, 2011, final rule at 76 FR 1525, 1531-1532, inadvertently used the wrong section names in the Title/Subject field for several of the section numbers that were approved into the Texas SIP. We are correcting the

Title/Subject field for 30 TAC Sections 116.911, 116.912, 116.916, 116.917, 116.918, 116.920, 116.930.

- The EPA’s February 13, 2020, final rule at 85 FR 8185, 8188, inadvertently omitted the information identifying the EPA’s approval date from the SIP-approved sections for 30 TAC Sections 116.164, 116.196, 116.198, 116.310, 116.611, and 116.615. We are correcting these sections to include the EPA approval date and FR citation.

III. Environmental Justice Consideration

The EPA reviewed demographic data and provided the results in our April 21, 2023, proposed rule. See 88 FR 24518, 24520 – 24521.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference revisions to the Texas regulations as described in Section II of this preamble, Final Action. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated in the next update to the SIP compilation.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions,

EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse

human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The state air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 15, 2023.

Earthea Nance,
Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 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, the table in paragraph (c) titled “EPA Approved Regulations in the Texas SIP” is amended by

i. Revising the entries for sections 39.405, 39.411, 39.412, 39.418, 39.419, 39.420, 39.426, 39.601, 39.602, 39.603, 39.604, 55.154, 55.156, 101.306, 116.111, 116.112, 116.164, 116.196, 116.198, 116.310, 116.615, 116.910, 116.911, 116.912, 116.920, and 116.1530, and

ii. Removing the heading “Subchapter H – Permits for Grandfathered Facilities” and sub-heading “Division 1 – General Applicability”, consisting of entries for sections 116.770 – 116.772 and sub-heading “Division 2 – Small Business Stationary Source Permits, Pipeline Facilities Permits, and Existing Facility Permits”, consisting of entries for sections 116.774, 116.775, 116.777-116.781, 116.783, 116.785 – 116.788, and 116.790.

The revisions read as follows:

§52.2270 Identification of plan.

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(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
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Chapter 39 – Public Notice				
Subchapter H – Applicability and General Provisions				
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Section 39.405	General Notice Provisions	8/25/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
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Section 39.411	Text of Public Notice	4/22/2020	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 39.412	Combined Notice for Certain Greenhouse Gases Permit Applications	8/25/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 39.418	Notice of Receipt of Application and Intent to Obtain Permit	8/25/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 39.419	Notice of Application and Preliminary Decision	8/25/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 39.420	Transmittal of the Executive Director’s Response to Comments and Decisions	4/22/2020	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	

Section 39.426	Alternative Language Requirements	8/25/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Subchapter K – Public Notice of Air Quality Permit Applications				
Section 39.601	Applicability	4/22/2020	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 39.602	Mailed Notice	8/25/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 39.603	Newspaper Notice	4/22/2020	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 39.604	Sign-Posting	8/25/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
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Chapter 55 – Requests for Reconsideration and Contested Case Hearings; Public Comment				
Subchapter E – Public Comment and Public Meetings				
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Section 55.154	Public Meetings	8/25/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	

Section 55.156	Public Comment Processing	8/25/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Chapter 101 – General Air Quality Rules				
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Subchapter H – Emissions Banking and Trading				
Division 1 – Emission Credit Program				
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Section 101.306	Emission Credit Use	4/22/2020	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
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Chapter 116 (Reg 6) – Control of Air Pollution by Permits for New Construction or Modification				
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Subchapter B – New Source Review Permits				
Division 1 – Permit Application				
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Section 116.111	General Application	4/22/2020	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 116.112	Distance Limitations	4/22/2020	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
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Division 6 – Prevention of Significant Deterioration Review				
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Section 116.164	Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources	10/31/2018	2/13/2020, 85 FR 8187	The PSD SIP does NOT include 30 TAC Section 116.164(b).
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Subchapter C – Plant-wide Applicability Limits				
Division 1 – Plant-wide Applicability Limits				
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Section 116.196	Renewal of a Plant-wide Applicability Limit Permit	10/31/2018	2/13/2020, 85 FR 8187	
Section 116.198	Expiration of Voidance	10/31/2018	2/13/2020, 85 FR 8187	
Subchapter D – Permit Renewals				
Section 116.310	Notification of Permit Holder	10/31/2018	2/13/2020, 85 FR 8187	
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Subchapter F – Standard Permits				
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Section 116.611	Registration to Use a Standard Permit	10/31/2018	2/13/2020, 85 FR 8187	30 TAC Section 116.611(b) is SIP-approved as adopted by the State as of 11/20/2002. The SIP does NOT include 30 TAC Section 116.611(c)(3), (c)(3)(A), and (c)(3)(B).
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Section 116.615	General Conditions	10/31/2018	2/13/2020, 85 FR 8187	
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Subchapter G – Flexible Permits				

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Section 116.765	Compliance Schedule	7/31/2014	7/20/2015, 80 FR 42729	SIP includes 30 TAC Section 116.765(b) and (c)
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Subchapter I – Electric Generating Facility Permits				
Section 116.910	Applicability	6/9/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
Section 116.911	Electric Generating Facility Permit Application	6/9/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	Section 116.911(a)(2) is authorized for Minor NSR only
Section 116.912	Electing Electric Generating Facilities	12/16/1999	1/11/2011, 76 FR 1525	
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Section 116.916	Permits for Grandfathered and Electing Electric Generating Facilities in El Paso County	12/16/1999	1/1/2011, 76 FR 1525	

Section 116.917	Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites	5/22/2002	1/11/2011, 76 FR 1525	
Section 116.918	Additional General and Special Conditions for Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites	5/22/2002	1/11/2011, 76 FR 1525	
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Section 116.920	Public Participation for Initial Issuance	6/9/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
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Section 116.930	Amendments and Alterations of Permits Issued Under this Subchapter	5/22/2002	1/11/2011, 76 FR 1525	
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Subchapter M – Best Available Retrofit Technology (BART)				

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Section 116.1530	Best Available Retrofit Technology (BART) Control Implementation	6/9/2021	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
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[FR Doc. 2023-17945 Filed: 8/23/2023 8:45 am; Publication Date: 8/24/2023]