

- 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 CAA; 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, this proposed rule, concerning the SO<sub>2</sub> attainment plan for the Warren nonattainment area in Pennsylvania, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: March 13, 2018.

**Cecil Rodrigues,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2018-05876 Filed 3-21-18; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2015-0843; FRL-9975-28-Region 6]

### Approval and Promulgation of Air Quality Implementation Plans; Texas; Infrastructure and Interstate Transport for the 2012 Fine Particulate Matter Ambient Air Quality Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from the State of Texas for the 2012 primary fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS). This submittal addresses how the existing SIP provides for implementation, maintenance, and enforcement of the 2012 PM<sub>2.5</sub> NAAQS (infrastructure SIP or i-SIP). This i-SIP ensures that the Texas SIP is adequate to meet the state's responsibilities under the CAA.

**DATES:** Written comments must be received on or before April 23, 2018.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2015-0843, at <http://www.regulations.gov> or via email to [fuerst.sherry@epa.gov](mailto:fuerst.sherry@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Sherry Fuerst, (214) 665-6454, [fuerst.sherry@epa.gov](mailto:fuerst.sherry@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. 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:

Sherry Fuerst, (214) 665-6454, [fuerst.sherry@epa.gov](mailto:fuerst.sherry@epa.gov). To inspect the hard copy materials, please schedule an appointment with her or Bill Deese at (214) 665-7253.

#### SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” or “our” mean EPA.

### I. Background

Below is a short discussion of the background of the 2012 PM<sub>2.5</sub> NAAQS addressed in this notice. For more information, please see the Technical Support Document (TSD) and EPA website <http://www3.epa.gov/ttn/naaqs/>.

EPA has regulated PM since 1971, when we published the first NAAQS for PM (36 FR 8186, April 30, 1971). Most recently, by notice dated January 15, 2013, following a periodic review of the NAAQS for PM<sub>2.5</sub>, EPA revised the primary annual PM<sub>2.5</sub> NAAQS to 12.0 µg/m<sup>3</sup> and retained the secondary PM<sub>2.5</sub> annual standard of 15 µg/m<sup>3</sup> as well as the 24-hour PM<sub>2.5</sub> primary and secondary standards of 35 µg/m<sup>3</sup> (78 FR 3086, December 14, 2012). The primary NAAQS is designed to protect human health, and the secondary NAAQS is designed to protect the public welfare.

Each state must submit an i-SIP within three years after the promulgation of a new or revised NAAQS. Section 110(a)(2) of the CAA includes a list of specific elements the i-SIP must meet. On September 13, 2013, the EPA issued guidance addressing the i-SIP elements for NAAQS.<sup>1</sup> On December 1, 2015, the Chairman of the Texas Commission on Environmental Quality (TCEQ) submitted an i-SIP revision to address the revised NAAQS for 2012 PM<sub>2.5</sub>.<sup>2</sup>

<sup>1</sup> “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2),” Memorandum from Stephen D. Page, September 13, 2013.

<sup>2</sup> Additional information, including the history of the priority pollutants, their levels forms and determination of compliance; EPA approach for reviewing i-SIP submittal and EPA's evaluation; the statute and regulatory citations in the Texas SIP specific to the review the specific i-SIP applicable CAA and EPA regulatory citations, **Federal Register** Notice citations for the Texas SIP approvals; Texas

## II. EPA's Evaluation of Texas' NAAQS Infrastructure Submission

Below is a summary of EPA's evaluation of the Texas i-SIP for each applicable element of 110(a)(2)(A)–(M)<sup>3</sup> that we are proposing to approve. At this time, we are not proposing action on the visibility protection sub-element under CAA section 110(a)(2)(D)(i)(II). Texas provided a demonstration of how the existing Texas SIP meets the requirements of the 2012 PM<sub>2.5</sub> NAAQS, on December 1, 2015.

(A) *Emission limits and other control measures*: The SIP must include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters as needed to implement, maintain and enforce each of the NAAQS.<sup>4</sup>

The Texas Clean Air Act (TCAA) provides the TCEQ with broad legal authority. It may adopt emission standards and compliance schedules applicable to regulated entities; emission standards and limitations and any other measures necessary for attainment and maintenance of national standards; and, enforce applicable laws, regulations, standards and compliance schedules, and seek injunctive relief. This authority has been employed in the past to adopt and submit multiple revisions to the Texas SIP. The approved SIP for Texas is documented at 40 CFR part 52.2270. TCEQ's air quality rules and standards are codified at Title 30, Part 1 of the Texas Administrative Code (TAC). Numerous parts of the regulations codified into 30 TAC necessary for implementing and enforcing the NAAQS have been adopted into the SIP.

(B) *Ambient air quality monitoring/data system*: The SIP must provide for establishment and implementation of ambient air quality monitors, collection and analysis of ambient air quality data,

and providing the data to EPA upon request.

The TCAA provides the authority allowing the TCEQ to collect air monitoring data, quality-assure the results, and report the data. TCEQ maintains and operates a monitoring network to measure levels of PM<sub>2.5</sub>, as well as other pollutants, in accordance with EPA regulations specifying siting and monitoring requirements. All monitoring data is measured using EPA approved methods and subject to the EPA quality assurance requirements. TCEQ submits all required data to us, following the EPA regulations. The Texas statewide monitoring network was approved into the SIP on May 31, 1972 (37 FR 10842, 10895), was revised on March 7, 1978 (43 FR 9275), and it undergoes annual review by EPA.<sup>5</sup> In addition, TCEQ conducts a recurrent assessment of its monitoring network every five years, as required by EPA rules. The most recent of these 5-year monitoring network assessments was conducted by TCEQ and approved by us in July of 2015.<sup>6</sup> The TCEQ website provides the monitor locations and posts past and current concentrations of criteria pollutants measured by the State's network of monitors.<sup>7</sup>

(C) *Program for enforcement of control measures*: The SIP must include the following three elements: (1) A program providing for enforcement of the measures in paragraph (A) above; (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS (*i.e.*, state-wide permitting of minor sources); and (3) a permit program to meet the major source permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question).<sup>8</sup>

(1) *Enforcement of SIP Measures*. As noted in (A), the TCAA provides authority for the TCEQ, its Chairman, and its Executive Director to enforce the requirements of the TCAA, and any regulations, permits, or final compliance orders. These statutes also provide the TCEQ, its Chairman, and its Executive Director with general enforcement powers. Among other things, they can

file lawsuits to compel compliance with the statutes and regulations; commence civil actions; issue field citations; conduct investigations of regulated entities; collect criminal and civil penalties; develop and enforce rules and standards related to protection of air quality; issue compliance orders; pursue criminal prosecutions; investigate, enter into remediation agreements; and issue emergency cease and desist orders. The TCAA also provides additional enforcement authorities and funding mechanisms.

(2) *Minor New Source Review (NSR)*. The SIP is required to include measures to regulate construction and modification of stationary sources to protect the NAAQS. The Texas minor NSR permitting requirements are approved as part of the SIP.<sup>9</sup>

(3) *Prevention of Significant Deterioration (PSD) permit program*. The Texas PSD portion of the SIP covers all NSR regulated pollutants as well as the requirements for the 2012 PM<sub>2.5</sub> NAAQS and has been approved by EPA (79 FR 66626, November 10, 2014).<sup>10</sup>

(D) *Interstate and international transport*: Under CAA section 110(a)(2)(D)(i), there are four sub-elements the SIP must include relating to interstate transport. The first two of the four sub-elements are provided in CAA section 110(a)(2)(D)(i)(I) and require that the SIP contain adequate provisions prohibiting emissions to other states which will (1) contribute significantly to nonattainment of the NAAQS, or (2) interfere with maintenance of the NAAQS. The third and fourth sub-elements are outlined in CAA section 110(a)(2)(D)(i)(II) and require that the SIP contain adequate provisions prohibiting emissions to other states which will (1) interfere with measures required to prevent significant deterioration or (2) interfere with measures to protect visibility. We are not taking action on the visibility protection sub-element at this time.

Texas's SIP revision submittal evaluated the two sub-elements of section 110(a)(2)(D)(i)(I) by considering the following factors:

- An analysis of the most recent annual PM<sub>2.5</sub> design values to determine

minor New Source Review program and EPA approval activities, and Texas' Prevention of Significant Deterioration (PSD) program can be found in the TSD.

<sup>3</sup> A detailed discussion of our evaluation can be found in the TSD for this action. The TSD can be accessed through [www.regulations.gov](http://www.regulations.gov) (e-docket EPA–R06–OAR–2013–0465).

<sup>4</sup> The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2012 PM<sub>2.5</sub>. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

<sup>5</sup> A copy of the 2017 Annual Air Monitoring Network Plan and our approval letter are included in the docket for this proposed rulemaking.

<sup>6</sup> A copy of TCEQ's 2015 5-year ambient monitoring network assessment and our response letter are included in the docket for this proposed rulemaking.

<sup>7</sup> See [http://www.tceq.texas.gov/airquality/monops/sites/mon\\_sites.html](http://www.tceq.texas.gov/airquality/monops/sites/mon_sites.html) and <http://www17.tceq.texas.gov/tamis/index.cfm?fuseaction=home.welcome>.

<sup>8</sup> We discuss these requirements in further detail in the TSD.

<sup>9</sup> EPA is not proposing to approve or disapprove the existing Texas minor NSR program to the extent that it may be inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for EPA to approve the infrastructure SIP for element C, program for enforcement of control measures, (*e.g.*, 76 FR 41076–41079). The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs.

<sup>10</sup> We discuss this requirement further in the TSD.

which areas near Texas violate, or are close to violating the 2012 annual PM<sub>2.5</sub> NAAQS;

- An analysis of the PM<sub>2.5</sub> annual design value trends in Texas to determine if the PM<sub>2.5</sub> concentrations in Texas are increasing or decreasing; and,
- An investigation of PM<sub>2.5</sub> annual design value trends in other states to determine whether PM<sub>2.5</sub> concentrations in those areas are increasing or decreasing.

This evaluation concluded that Texas will not significantly contribute to nonattainment or interfere with maintenance of the PM<sub>2.5</sub> NAAQS in other states.

On March 17, 2016 EPA issued a memorandum providing information on the development and review of SIPs that address CAA section 110(a)(2)(D)(i) for the 2012 PM<sub>2.5</sub> NAAQS (Memorandum).<sup>11</sup> We used the information in the Memorandum and additional information for our evaluation and came to the same conclusion as the State. In our evaluation, as discussed in greater detail in the TSD, we identified the potential downwind nonattainment and maintenance receptors (*i.e.*, monitors), and then evaluated them to determine if Texas's emissions could potentially contribute to nonattainment and maintenance problems in 2021, the attainment year for moderate PM<sub>2.5</sub> nonattainment areas. Specifically, the analysis identified (i) 17 potential nonattainment and maintenance receptors in California, but based on our evaluation of the local emissions, wind speed and direction, topographical and meteorological conditions and seasonal variations recorded at the monitors, we propose to conclude that Texas's emissions do not significantly impact those receptors; (ii) one potential receptor in Shoshone County, Idaho, but based on an evaluation similar to that of the California monitors, we propose to conclude that Texas's emissions do not significantly impact that receptor; (iii) one potential receptor in Allegheny County, Pennsylvania, but we expect the air quality affecting it to improve to the point where there will not be a nonattainment or maintenance receptor by 2021 and, in any event, modeling from the Cross-State Air Pollution Rule (CSAPR) indicates that Texas emissions

are not impacting it; (iv) the receptors in four counties in Florida have data gaps, and as such, we initially treat those counties as potential nonattainment or maintenance receptors, but it is unlikely that they will in fact be nonattainment or maintenance receptors in 2021 and in any event, CSAPR modeling indicates that Texas emissions do not impact them; and (v) all receptors in Illinois have data gaps, and same as in (iv) we initially treat them as potential nonattainment or maintenance receptors, but it is unlikely that they will in fact nonattainment or maintenance receptors in 2021 because the most recent air quality data (from 2015 and 2016) indicates that all monitors in Illinois are likely attaining the PM<sub>2.5</sub> NAAQS. Thus, EPA is proposing to approve the SIP revisions as meeting CAA section 110(a)(2)(i)(I) sub-elements that Texas emissions will not contribute significantly to nonattainment or interfere with maintenance of the 2012 PM<sub>2.5</sub> NAAQS for any other state.

With regard to the PSD sub-element of CAA section 110(a)(2)(D)(i)(II), Texas stated, as noted in element C above, that it has a comprehensive EPA-approved PSD program. As we have approved the Texas comprehensive PSD program (79 FR 66626, November 10, 2014), the third sub-element, that the SIP contain adequate provisions prohibiting emissions to other states which will interfere with measures required to prevent significant deterioration is met. Therefore, we are proposing to approve the portion of the State's i-SIP submission which addresses the PSD sub-element of interstate transport. As noted above, at this time we are not proposing action on the visibility protection sub-element of interstate transport.

A more detailed evaluation of how the SIP revision meets the first three sub-elements of CAA section 110(a)(2)(D)(i) may be found in the TSD.

CAA section 110(a)(2)(D)(ii) requires that the SIP contain adequate provisions insuring compliance with the applicable requirements of sections 126 (relating to interstate pollution abatement) and 115 (relating to international pollution abatement). As stated in its submittal, Texas meets the section 126 requirements as (1) it has a fully approved PSD SIP (79 FR 66626, November 10, 2014), which includes notification to neighboring air agencies of potential impacts from each new or modified major source and (2) no source or sources have been identified by the EPA as having any interstate impacts under section 126 in any pending action related to any air pollutant. Texas meets

section 115 requirements as there are no findings by EPA that Texas air emissions affect other countries.

Therefore, we propose to approve the submitted revision pertaining to CAA section 110(a)(2)(D)(ii).

*(E) Adequate authority, resources, implementation, and oversight:* The SIP must provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements relating to state boards; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan.

Both elements (A) and (E) address the requirement that there is adequate authority to implement and enforce the SIP and that there are no legal impediments.

The i-SIP submission for the 2012 PM<sub>2.5</sub> NAAQS describes the SIP regulations governing the various functions of personnel within the TCEQ, including the administrative, technical support, planning, enforcement, and permitting functions of the program.

With respect to funding, the TCAA requires TCEQ to establish an emissions fee schedule for sources in order to fund the reasonable costs of administering various air pollution control programs and authorizes TCEQ to collect additional fees necessary to cover reasonable costs associated with processing of air permit applications. EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to, among other things, implement and enforce the SIP.

As required by the CAA, the Texas statutes and the SIP stipulate that any board or body, which approves permits or enforcement orders, must have at least a majority of members who represent the public interest and do not derive any "significant portion" of their income from persons subject to permits and enforcement orders or who appear before the board on issues related to the CAA or the TCAA. The members of the board or body, or the head of an agency with similar powers, are required to adequately disclose any potential conflicts of interest.

With respect to assurances that the State has responsibility to implement the SIP adequately when it authorizes local or other agencies to carry out portions of the plan, the Texas statutes

<sup>11</sup> "Information on the Interstate Transport Good Neighbor Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)," Memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards (March 17, 2016), [https://www.epa.gov/sites/production/files/2016-08/documents/good-neighbor-memo\\_implementation.pdf](https://www.epa.gov/sites/production/files/2016-08/documents/good-neighbor-memo_implementation.pdf).

and the SIP designate the TCEQ as the primary air pollution control agency and TCEQ maintains authority to ensure implementation of any applicable plan portion.

*(F) Stationary source monitoring system:* The SIP must provide for the establishment of a system to monitor emissions from stationary sources and to submit periodic emission reports. It must require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from such sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and require that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

The TCAA authorizes the TCEQ to require persons engaged in operations which result in air pollution to monitor or test emissions and to file reports containing information relating to the nature and amount of emissions. There also are SIP-approved state regulations pertaining to sampling and testing and requirements for reporting of emissions inventories. In addition, SIP-approved rules establish general requirements for maintaining records and reporting emissions.

The TCEQ uses this information, in addition to information obtained from other sources, to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with SIP-approved regulations and additional EPA requirements. The SIP requires this information be made available to the public. Provisions concerning the handling of confidential data and proprietary business information are included in the SIP-approved regulations. These rules specifically exclude from confidential treatment any records concerning the nature and amount of emissions reported by sources.

*(G) Emergency authority:* The SIP must provide for authority to address activities causing imminent and substantial endangerment to public health or welfare or the environment and to include contingency plans to implement such authorities as necessary.

The TCAA provides TCEQ with authority to address environmental emergencies, and TCEQ has contingency

plans to implement emergency episode provisions. Upon a finding that any owner/operator is unreasonably affecting the public health, safety or welfare, or the health of animal or plant life, or property, the TCAA and 30 TAC chapters 35 and 118 authorize TCEQ to, after a reasonable attempt to give notice, declare a state of emergency and issue without hearing an emergency special order directing the owner/operator to cease such pollution immediately. The TCEQ may issue emergency orders, or issue or suspend air permits as required by an air pollution emergency.

*(H) Future SIP revisions:* States must have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

The TCAA authorizes the TCEQ to revise the Texas SIP, as necessary, to account for revisions of an existing NAAQS, establishment of a new NAAQS, to attain and maintain a NAAQS, to abate air pollution, to adopt more effective methods of attaining a NAAQS, and to respond to EPA SIP calls concerning NAAQS adoption or implementation.

*(I) Nonattainment areas:* The CAA section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas.

However, as noted earlier, EPA does not expect infrastructure SIP submissions to address subsection (I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. Instead, EPA will take action on any part D attainment plan SIP submission through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D.

*(J) Consultation with government officials, public notification, PSD and visibility protection:* The SIP must meet the following three CAA requirements: (1) Section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; and (3) prevention of significant deterioration of air quality and (4) visibility protection.

*(1) Interagency consultation:* As required by the TCAA, there must be a public hearing before the adoption of

any regulations or emission control requirements, and all interested persons are given a reasonable opportunity to review the action that is being proposed and to submit data or arguments, either orally or in writing, and to examine the testimony of witnesses from the hearing. In addition, the TCAA provides the TCEQ the power and duty to establish cooperative agreements with local authorities, and consult with other states, the federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control. Furthermore, the Texas PSD SIP rules mandate that the TCEQ shall provide for public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, tribal authorities, and Federal Land Manager (FLMs) whose lands may be affected by emissions from the source or modification. Additionally, the State's PSD SIP rules require the TCEQ to consult with FLMs regarding permit applications for sources with the potential to impact Class I Federal Areas. The SIP also includes a commitment to consult continually with the FLMs on the review and implementation of the visibility program. The State recognizes the expertise of the FLMs in monitoring and new source review applicability analyses for visibility, and has agreed to notify the FLMs of any advance notification or early consultation with a new or modifying source prior to the submission of a permit application. Likewise, the State's Transportation Conformity SIP rules provide for interagency consultation, resolution of conflicts, and public notification.

*(2) Public Notification:* The i-SIP submission from Texas provide the SIP regulatory citations requiring the TCEQ to regularly notify the public of instances or areas in which any NAAQS are exceeded. Included in the SIP are the rules for TCEQ to advise the public of the health hazard associated with such exceedances; and enhance public awareness of measures that can prevent such exceedances and of ways in which the public can participate in the regulatory and other efforts to improve air quality. In addition, as discussed for infrastructure element B above, the TCEQ air monitoring website provides quality data for each of the monitoring stations in Texas; this data is provided instantaneously for certain pollutants, such as ozone. The website also provides information on the health

effects of lead, ozone, particulate matter, and other criteria pollutants.

(3) *PSD and Visibility Protection*: The PSD requirements for this element are the same as those addressed under element (C) above. The Texas SIP requirements relating to visibility protection are not affected when EPA establishes or revises a NAAQS. Therefore, EPA believes that there are no new visibility protection requirements due to the revision of the NAAQS, and consequently there are no newly applicable visibility protection obligations pursuant to infrastructure element (J).

(K) *Air quality and modeling/data*: The SIP must provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

The TCEQ has the power and duty, under TCAA to develop facts and investigate providing for the functions of environmental air quality assessment. Past modeling and emissions reductions measures have been submitted by the State and approved into the SIP. Additionally, TCEQ has the ability to perform modeling for primary and secondary NAAQS on a case by case permit basis consistent with their SIP-

approved PSD rules and with EPA guidance.

The TCAA authorizes and requires TCEQ to cooperate with the federal government and local authorities concerning matters of common interest in the field of air quality control, thereby allowing the agency to make such submissions to the EPA.

(L) *Permitting Fees*: The SIP must require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under the CAA, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by EPA.

See the discussion for element (E) above for the description of the mandatory collection of permitting fees outlined in the SIP.

(M) *Consultation/participation by affected local entities*: The SIP must provide for consultation and participation by local political subdivisions affected by the SIP.

See discussion for element (J) (1) and (2) above for a description of the SIP's

public participation process, the authority to advise and consult, and the PSD SIP's public participation requirements. Additionally, the TCAA also requires initiation of cooperative action between local authorities and the TCEQ, between one local authority and another, or among any combination of local authorities and the TCEQ for control of air pollution in areas having related air pollution problems that overlap the boundaries of political subdivisions, and entering into agreements and compacts with adjoining states and Indian tribes, where appropriate. The transportation conformity component of the Texas SIP requires that interagency consultation and opportunity for public involvement be provided before making transportation conformity determinations and before adopting applicable SIP revisions on transportation-related issues.

### III. Proposed Action

EPA is proposing to approve the majority of the December 1, 2015 infrastructure SIP submission from Texas, which address the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2012 PM<sub>2.5</sub> NAAQS. The Table below outlines the specific actions EPA is proposing to approve.

TABLE 1—PROPOSED ACTION ON TEXAS INFRASTRUCTURE SIP SUBMITTAL FOR VARIOUS NAAQS

Element	2012 PM <sub>2.5</sub>
(A): Emission limits and other control measures .....	A
(B): Ambient air quality monitoring and data system .....	A
(C)(i): Enforcement of SIP measures .....	A
(C)(ii): PSD program for major sources and major modifications .....	A
(C)(iii): Permitting program for minor sources and minor modifications .....	A
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (requirements 1 and 2) .....	A
(D)(i)(II): PSD (requirement 3) .....	A
(D)(i)(III): Visibility Protection (requirement 4) .....	NA
(D)(ii): Interstate and International Pollution Abatement .....	A
(E)(i): Adequate resources .....	A
(E)(ii): State boards .....	A
(E)(iii): Necessary assurances with respect to local agencies .....	A
(F): Stationary source monitoring system .....	A
(G): Emergency power .....	A
(H): Future SIP revisions .....	A
(I): Nonattainment area plan or plan revisions under part D .....	+
(J)(i): Consultation with government officials .....	A
(J)(ii): Public notification .....	A
(J)(iii): PSD .....	A
(J)(iv): Visibility protection .....	+
(K): Air quality modeling and data .....	A
(L): Permitting fees .....	A
(M): Consultation and participation by affected local entities .....	A

**Key to Table 1:** Proposed action on TX infrastructure SIP submittals for various NAAQS.

A—Approve.

—Not germane to infrastructure SIPs.

NA EPA is taking no action on this infrastructure requirement.

Based upon review of the State's infrastructure SIP submission and

relevant statutory and regulatory authorities and provisions referenced in

this submission or referenced in Texas' SIP, EPA believes that Texas has the

infrastructure in place to address all applicable required elements of sections 110(a)(1) and (2) (except otherwise noted) to ensure that the 2012 PM<sub>2.5</sub>, NAAQS are implemented in the state.

#### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; 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).

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 proposed 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).

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

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

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

Dated: March 16, 2018.

**Anne Idsal,**

*Regional Administrator, Region 6.*

[FR Doc. 2018-05767 Filed 3-21-18; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 84

[Docket No. CDC-2018-0003; NIOSH-309]

RIN 0920-AA66

### Clarification of Post-Approval Testing Standards for Closed-Circuit Escape Respirators; Technical Amendments

**AGENCY:** Centers for Disease Control and Prevention, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Health and Human Services (HHS) proposes to modify current language found in Title 42 of the Code of Federal Regulations which addresses post-approval testing of closed-circuit escape respirators (CCERs). The revised language should clarify that post-approval testing of CCERs may exclude human subject testing and environmental conditioning, at the discretion of the National Institute for Occupational Safety and Health (NIOSH) within the Centers for Disease Control and Prevention, HHS. The revision to the text in this paragraph will clarify the scope of post-approval testing conducted by NIOSH.

**DATES:** Comments must be received by May 21, 2018.

**ADDRESSES:** *Written comments:* You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS-C34, 1090

Tusculum Avenue, Cincinnati, OH 45226.

**Instructions:** All submissions received must include the agency name (Centers for Disease Control and Prevention, HHS) and docket number (CDC-2018-0003; NIOSH-309) or Regulation Identifier Number (0920-AA66) for this rulemaking. All relevant comments, including any personal information provided, will be posted without change to <http://www.regulations.gov>. For detailed instructions on submitting public comments, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rachel Weiss, Office of the Director, NIOSH; 1090 Tusculum Avenue, MS-C-48, Cincinnati, OH 45226; telephone (855) 818-1629 (this is a toll-free number); email [NIOSHregs@cdc.gov](mailto:NIOSHregs@cdc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation

Interested parties may participate in this rulemaking by submitting written views, opinions, recommendations, and data. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you do not wish to be disclosed. You may submit comments on any topic related to this notice of proposed rulemaking.

##### II. Statutory Authority

Pursuant to the Occupational Safety and Health (OSH) Act of 1970 (Pub. L. 91-596), the Organic Act of 1910 (Pub. L. 179), and the Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173), NIOSH is authorized to approve respiratory equipment and to conduct scientific investigations or tests concerning the safety and health of miners and other workers.

##### III. Background

The provisions in 42 CFR 84.310 govern the procedures NIOSH follows in conducting post-approval testing of closed-circuit escape respirators (CCERs) sold and distributed to employees. The post-approval testing program, known as the long-term field evaluation (LTFE) program, is designed to ensure the CCERs' continued safety and viability as emergency life support after having been exposed to harsh environments such as those found in mining. According to the existing language in § 84.310(c), post-approval