



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2013-0542; FRL-9913-48-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 Environmental Protection Agency (EPA) is conditionally approving revisions to the Texas New Source Review (NSR) State Implementation Plan (SIP) to establish the Texas Minor NSR Flexible Permits Program, submitted by the Texas Commission on Environmental Quality (TCEQ). The conditional approval is predicated on a commitment from TCEQ in a letter dated December 9, 2013, to adopt certain minor clarifications to the Flexible Permit Program by November 30, 2014. The EPA is finalizing this action under section 110 of the Clean Air Act (CAA).

DATES: This final rule is 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). To inspect the hard copy materials, please schedule an appointment with the person listed in the FOR FURTHER INFORMATION CONTACT paragraph below or Mr. Bill Deese at 214-665-7253.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Kordzi, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, 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.

Table of Contents

- I. Background for this Final Action
- II. Response to Comments
- III. When Is This Action Effective?
- IV. Final Action
- V. Statutory and Executive Order Reviews

I. Background for this Final Action

On September 23, 2009, the EPA proposed to disapprove revisions to the SIP submitted by the State of Texas that established the Flexible Permit Program. 74 FR 48480. On July 15, 2010, the EPA took final action by disapproving Texas' Flexible Permit Program. 75 FR 41312.

For a detailed discussion of our rationale for the disapproval see 75 FR 41312 (July 15, 2010). Upon finalization of the rule several parties appealed the decision to the Fifth Circuit Court of Appeals. In July and August of 2010 the State of Texas, Texas Oil & Gas Association (TXOGA), Texas Association of Manufacturers, and Business Coalition for Clean Air (BCCA) Appeal Group all filed petitions with the Fifth Circuit Court of Appeals seeking to overturn the EPA's disapproval of the Flexible Permit Program. During the same time period, the Environmental Defense Fund (EDF) and Environmental Integrity Project (EIP) moved for leave to intervene in support of the EPA's disapproval. Their request to intervene was granted by the Court. While the challenge was pending, the state adopted a modified flexible permits regulation, but did not submit it to the EPA.

On August 13, 2012, the Fifth Circuit Court of Appeals granted the petitioner's review, vacated our disapproval of the Texas Flexible Permit Program and remanded the matter back to the EPA for further review. After the Court remanded the Flexible Permit Rule to the EPA, the State, in a letter dated September 12, 2012, requested that we take action on the original Flexible Permit Program submittal package in accordance with the ruling of the Fifth Circuit Court of Appeals. Following discussions with the EPA, on September 24, 2013, Texas formally adopted and approved this SIP revision which is comprised of the original submittal that the EPA took its disapproval action on as well as rule additions agreed upon between the TCEQ and the EPA that the EPA finds are essential to the program's approvability.

On October 21, 2013, Texas formally submitted to the EPA this final revision to the SIP.

The TCEQ also identified in the Flexible Permits Program SIP submittal cover letter, several sections of previous SIP submittals that are withdrawn from the EPA's consideration as revisions to the Texas SIP. Accordingly, the EPA recognizes the following sections as withdrawn by the State and no longer before us for review or action:

- 30 TAC Section 116.711(3) (last sentence only) and (11), as amended August 21, 2002, and all earlier versions withdrawn October 21, 2013.
- Adopted revisions submitted October 21, 2013. 30 TAC Section 116.715(a), only with regard to the text “or Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA Section 112(g), 40 CFR Part 63))”, as amended August 21, 2002, and all earlier versions withdrawn on October 21, 2013.
- 30 TAC Section 116.715(c)(6) as amended August 20, 2003, and all earlier versions withdrawn October 21, 2013. 30 TAC Section 116.716(a) and (d), as adopted November 16, 1994, withdrawn October 21, 2013.
- 30 TAC Section 116.730 adopted November 16, 1994, and repealed and readopted June 17, 1998.
- 30 TAC Section 116.740(b), adopted June 17, 1998, and amended September 2, 1999, withdrawn October 21, 2013. 30 TAC Section 116.803, adopted August 21, 2002, withdrawn October 21, 2013.

The EPA is today conditionally approving the October 21, 2013, submittal. The October 21, 2013, submittal, including the Texas Order of the Commission adopting the SIP revision dated September 26, 2013, and the accompanying cover letter (available in the docket for this

rulemaking), essentially resubmits all relevant portions of the prior Flexible Permits submittals and therefore constitutes the entire Flexible Permit Program. The EPA issued a notice proposing conditional approval. 79 FR 8368 (Feb. 12, 2014).

II. Response to Comments

The EPA originally proposed a comment period of 30 days but extended the comment period an additional 21 days after receiving a request from EIP on February 28, 2014. This extension provided a total of 51 days for comment, through April 4, 2014. We received comments from 5 organizations as follows: the TCEQ, the TXOGA, the Texas Industry Project (TIP), the BCCA and the EIP on behalf of the Public Citizen's Texas Office, Air Alliance Houston, Environment Texas, Texas Campaign for the Environment, and the Sierra Club. All comment letters can be found in their entirety in the docket for this rulemaking. The following section summarizes the comments received and provides responses to each. Note that comments are grouped together into categories to assist the reader.

General Comments in Support of the Proposed Approval

Comment 1: TXOGA stated that their members support the EPA's February 12, 2014, proposed conditional approval of the Texas Flexible Permit Rules as revisions to the Texas SIP. The BCCA and the TIP also expressed support of the EPA's proposed conditional approval of the Flexible Permit Program. TXOGA stated they believe the rule will help provide certainty in the air permitting process for Texas industry and continued compliance with the Federal CAA.

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

Comment 2: The TCEQ supports the EPA's February 12, 2014, proposed conditional approval of the Texas Flexible Permit Rules as revisions to the Texas SIP. The TCEQ informed the EPA that on February 12, 2014, rule amendments were proposed to ensure that the text and organization of the Flexible Permit Program rules include only what is in the 2013 submittal, as well as some updated non-substantive rule text adopted in 2010. These non-substantive amendments were adopted to clarify the Flexible Permit Program and do not materially alter the Flexible Permit Program. Based on the issues litigated after the EPA's disapproval of the Flexible Permit Program rules on July 15, 2010, some of the rule amendments adopted on December 14, 2010, are not necessary for the EPA approval of the Flexible Permit Program and thus are currently proposed for repeal. The TCEQ's rulemaking is expected to fulfill the terms of the conditional approval and allow the EPA to adopt the Flexible Permit Program rules in full as a SIP revision, which will resolve the outstanding issues with regard to this Minor NSR program. Specifically, the amendments proposed by the TCEQ on February 12, 2014, regarding the following rules: 30 TAC Sections 116.13, 116.710, 116.711, 116.715, 116.716, 116.717, 116.718, 116.721, and 116.765. Of these, 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, will be submitted to the EPA as revisions to the Texas SIP. In addition to the re-submittal of rules adopted in 1994 – 2003 for the Flexible Permit Program, the 2013 SIP submittal included certain rule changes adopted by the commission in 2010 that help clarify the rules. These 2010 amendments included changes in rule format as well as some revised and additional text. The TCEQ does not consider these changes as material

alterations to the program, nor was the text specifically related to the primary issues in the litigation regarding the EPA's disapproval of the Flexible Permit Program in 2010.

Response 2: The EPA agrees with the TCEQ's assessment of the scope of this approval action. The EPA appreciates the support for our proposed conditional approval. No changes were made to the final rule as a result of this comment.

Comments Regarding the Effective Date of the Regulation

Comment 3: The BCCA and the TIP request that the regulation become effective on the day of the Federal Register publication. In addition, TXOGA requested that the EPA finalize the conditional approval as soon as possible so the program will be a federally approved part of the Texas SIP and make the approval effective on the day of publication. These requests are based on the exceptions to the requirement for a 30 day delay in the effective date provided for in the Administrative Procedure Act (APA). The commenters state that "EPA may properly find good cause because an immediately effective conditional approval would provide economic benefits by giving certainty to the flexible permits issued by TCEQ pursuant to the program." This group of commenters further states "Texas first submitted the program to EPA in 1994 and issued approximately 140 flexible permits under the terms of the program. Thus, an immediately effective conditional approval of the Flexible Permit Program will have the effect of granting or recognizing an exemption or relieving a restriction imposed by the existing program."

Response 3: The EPA has reviewed the request to make the rule immediately effective. The APA requires a 30 day delayed effective date unless the rule qualifies for a statutory exception. We do not agree that this rule qualifies for such an exception and therefore the rule will become effective 30 days after publication.

The commenters argue that approval of the rule will make the program a federally approved part of the SIP, providing certainty and economic benefits to the regulated community.

To the extent that this is true, it is true of all SIP approvals, and provides no unique basis for making *this* SIP approval immediately effective. The commenters also appear to be suggesting that approval of this rule will make all previously-issued Texas flexible permits federally approved. Thus, the commenters point to the 140 permits that have already been “issued by TCEQ pursuant to the program,”¹ and assert that today’s approval “will have the effect of granting or recognizing an exemption or relieving a restriction imposed by the existing program.”

In sum, the commenters appear to be implying that this approval will transform state-only flexible permits issued since 1994 into federally approved permits upon the effective date of this rule. This is not the case and the EPA strongly rejects any suggestion to the contrary,

The state established and submitted for EPA approval a Flexible Permit Program in 1994. As described in detail below, the provisions of the 1994 program were never in any earlier version of the Flexible Permit Program submitted to the EPA. Those provisions could not have been used as a legal basis for establishing terms and conditions of state-only permits issued in the 1990s. Because those permits were not issued under the regulations that we are approving today, there can be no assurance that the state-only permits fully comply with all elements of the Flexible Permits Program we are approving today. Accordingly, today’s action cannot make those state-only permits federally approved unless and until a permit is reissued under the authority of the program being approved today with terms and conditions defined by that program.

In sum, therefore, the EPA finds no basis for making the rule effective immediately, and no

¹ While EPA does not dispute that Texas has issued 140 flexible permits during the life of the program, many of those permits have been “de-flexed” and no longer are within the scope of that program. EPA understands that approximately 25 state-only flexible permits have not been de-flexed and remain part of the state program.

changes were made to the final rule as a result of this comment.

Remaining Comments

Comment 4: The BCCA and the TIP request that the EPA confirm that a final conditional approval means that the rule is federally approved and that the enforceability is not deferred until the State's satisfaction of the commitment.

Response 4: The EPA agrees and confirms that the final conditional approval means that the rule is federally approved on the effective date of this **Federal Register** notice. A discussion in 71 FR 52703 at 52704, September 6, 2006, outlines the protocol regarding implementation of a conditional approval. In general, a conditional approval remains in effect (and therefore enforceable) until the EPA takes its final action that the rule is ultimately approvable or is not approvable dependent upon whether the State has met its commitments.

Comments 5-9 Summary: The EIP made several comments that effectively argue in various ways that the Flexible Permit Program can be used to authorize major source construction or modification that should be subject to Prevention of Significant Deterioration (PSD) or Non-attainment New Source Review (NNSR). The EPA summarizes and responds individually and in detail, but also wishes to introduce that discussion by explaining the basis for its overarching conclusion that the Flexible Permit Program cannot be used to authorize major source construction or modification. The EPA rejects any suggestion that the Flexible Permit Program will allow circumvention of Major NSR requirements. The EPA wants to be clear on this point both to the public and future permittees. This is a Minor NSR program. The Fifth Circuit Court of Appeals reviewed the Flexible Permit Program, and concluded that it could not

be used to authorize construction or modification that should be subject to the requirements of the major source NNSR or PSD programs: “The Flexible Permit Program does not allow Major NSR evasion because it affirmatively requires compliance with Major NSR.” *Texas v. EPA*, 690 F.3d 670, 678 (Fifth Cir. 2012). The TCEQ clearly states this in their guidance and the EPA today is approving the Flexible Permit Program only as a Minor NSR program. Permittees who use this Minor NSR program to circumvent Major NSR are violating the approved Texas SIP. We believe that the revised Flexible Permit Program we are conditionally approving today meets the requirement of the CAA, our Minor NSR rules and the Fifth Circuit’s interpretation of both. If the permit program is used in ways to circumvent Major NSR, those actions would be violations. While it does not impact program approval, it is related to enforcement and implementation.

As explained in our proposed conditional approval at 79 FR 8368, 8380, February 12, 2014, the Texas rules as submitted October 21, 2013, and found in 30 TAC Sections 116.711(H) & (I) require that all flexible permit applications contain information demonstrating that each facility complies with PSD and NNSR requirements.

Comment 5: The EIP commented that Flexible Permit changes may be made without evaluating Major NSR applicability.

Response 5: The EPA disagrees with the commenter’s assertion regarding a permittee’s responsibilities to make changes in accordance with Major NSR permitting requirements. As noted, the Texas rules as submitted October 21, 2013, and found in 30 TAC Sections 116.711(H)

& (I)² require that all flexible permit applications contain information for each facility³ demonstrating compliance with Prevention of Significant Deterioration (PSD) and non-attainment new source review (NNSR) requirements. Further, the facilities (units) covered under a flexible permit cap are created in accordance with 30 TAC Section 116.716(c), which requires compliance with all PSD and NNSR requirements for applicable facilities (units) subject to major BACT and LAER requirements up to the permit limit on potential to emit. Those individual facilities that are not subject to major BACT or LAER as defined in 30 TAC Section 116.10 are calculated based on expected maximum capacity (i.e., potential to emit). The calculated emission levels for all facilities (units) are then summed, and capped and the total is analyzed to ensure compliance with NAAQS requirements. If changes are made to the stationary source that vary from the permit application representations, the applicant is required to amend or alter the flexible permit in accordance with procedures set out in 30 TAC Section 116.721, which are analogous to already SIP approved rules regarding changes found in Subchapter B, 30 TAC Section 116.116. However, emission “flexibility” between “facilities” (units) is allowed under the cap as long as operations are consistent with permit application representations and individual, applicable BACT and LAER requirements for each individual affected major PSD and LAER facility (unit) are met. No changes have been made to the final rule as a result of this comment.

Comment 6: The EIP commented that flexible permits improperly tie Major NSR

² The TCEQ notified the EPA in its comment letter of April 1, 2014, that this requirement will be renumbered in the updated rule as 30 TAC Sections 116.711(2)(H) & (I) in response to their commitment letter of December 9, 2013.

³ The EPA notes TCEQ’s definition of “facility” as an individual “unit” see 30 TAC Section 116.10(4) definition of facility.

applicability requirements to increases in allowable emissions.

Response 6: The EPA disagrees with the commenter's assertion that Major NSR applicability is determined based on allowable emission increases. All sources must submit a permit application for an amendment or alteration when changes are made at the source that vary from existing application representations. Changes meeting the criteria resulting in the need for PSD and NNSR review require each facility (unit) to comply with all applicable requirements as stated in accordance with 30 TAC Sections 116.711(H) & (I). The TCEQ PSD regulations are already SIP approved and require a stationary source to analyze emission increases based on actual emissions as stated in PSD requirements found in 30 TAC Section 116.160(c). The TCEQ defines project netting in 30 TAC Section 116.12(28) as "The sum of the following: the project emissions increase, minus any source-wide creditable emission decreases proposed at the source between the date of application for the modification and the date the resultant modification begins emitting. Baseline actual emissions shall be used to determine emissions increases and decreases. Increases and decreases must meet the creditability criteria listed under the definition of net emissions increase in this section." No changes have been made to the final rule as a result of this comment.

Comment 7: The EIP commented that flexible permit caps exceed baseline actual emissions.

Response 7: The EPA agrees that flexible permit caps, when established, can exceed baseline actual emissions for the facilities (units) the cap will cover. The rules at 30 TAC Section 116.716(c) define how a flexible permit cap is established. There are no federal guidelines that prohibit developing a flexible permit cap for a Minor NSR permit action using "potential to

emit” emission thresholds provided the emission values, as represented in the permit application and used in establishing a cap limit, are fully evaluated for potential NAAQS violations and NSR permitting requirements in the initial permit action. A Minor NSR flexible permit cap is not a Plantwide Applicability Limit (PAL). PALs covering all facilities (units) at a stationary source, both major and minor, are to be based on each individual baseline actual emission for each individual facility (unit).

A grouping of facilities (units) for which flexibility is desired is determined by the permit applicant. Provided there are no deviations from the application representations and the emission increases do not exceed significant threshold categories for Major PSD and NNSR requirements, the permittee is afforded some flexibility in how compliance with the flexible permit cap emission limitations are met. In any case, any facility (unit) also subject to individual BACT emission limitations must always demonstrate compliance with that emission limitation as well. (See Response No. 6 above for a discussion of how emission caps must be established.)

Regarding the eight permit examples provided by EIP in Attachment A, all sources cited must submit permit applications for amendments or alterations in accordance with 30 TAC Section 116.721 if, and when changes are made at the source that vary from existing application representations. Those modification requirements are analogous to already SIP-approved rules found in 30 TAC Section 116.116. No changes have been made to the final rule as a result of this comment.

Comment 8: The EIP commented that the TCEQ has issued flexible permits that are virtually unlimited in scope.

Response 8: The EPA agrees that some of the State-only flexible permits initially issued

under the state Flexible Permit Program that was not SIP-approved may not have met Clean Air Act requirements. See EPA's Fair Notice Letter dated September 25, 2007, to flexible permit holders in Texas and signed by John Blevins, Director, Compliance Assurance and Enforcement Division, EPA Region 6. However, the revised rules upon which this final conditional approval action is being taken do limit the scope of how stationary sources will be permitted to use flexible permit caps. These rules will ensure practicable enforceability of Clean Air Act requirements. The rules contain specialized monitoring, recordkeeping, and reporting elements. Specifically 30 TAC Section 116.715(c)(5)(A) requires each flexible permit to specify requirements for monitoring or demonstrating compliance with emission caps and individual emission limits in the flexible permit. Further, amended rule 30 TAC Section 116.715(c)(5)(B) requires each flexible permit to specify emission calculation methods for calculating annual and short term emissions for each pollutant. In addition, 30 TAC Section 116.715(d)(1) specifies that a flexible permit include specific monitoring, recordkeeping, and reporting conditions in flexible permits as appropriate for the type of facilities and emissions authorized under a cap. Compliance with the cap will be based on a 12 month rolling average to ensure continuous compliance. No changes have been made to the rule as a result of this comment.

Comment 9: The EIP commented that Texas' flexible permit rules indicate that flexible permits may be used to eliminate major NSR permit requirements.

Response 9: The EPA disagrees with the commenter's assertion. As explained previously, this is a Minor NSR program. The rules contain a provision found in 30 TAC Section 116.711(2)(M)(vii) which specifies that a flexible permit application must identify any terms, conditions, and representations in any Subchapter B (i.e., Major NSR) permit which will be

superseded by or incorporated under a flexible permit and an analysis of how the conditions and control requirements of a subchapter B permit will be carried forward in the proposed flexible permit. Further 30 TAC Sections 116.716(c), 116.716(d), and 116.716(e) specify how to calculate an emission cap and how to handle individual emission limitations. In addition, these rules identify the facilities (units) subject to an emission cap, and outline that the permit shall clearly identify the facilities (units) subject to the emission cap so that those facilities (units) subject to Major PSD and NNSR requirements ensure compliance with major source BACT and LAER. No changes have been made to the rule as a result of this comment.

Comment 10: The EIP commented that flexible permit BACT requirements are not sufficiently stringent.

Response 10: The EPA disagrees regarding the stringency of the flexible permit control technology requirements. The Flexible Permit Program has been determined to be a Minor NSR program and the Clean Air Act does not require that minor sources employ any particular control technology. Activities made under a Flexible Permit must meet the emission control requirements for a Minor NSR program as found in 30 TAC Section 116.711(2)(C). However, for any facility (unit) that is subject to Major NSR permitting requirements, i.e., PSD, the rules contain safeguards as discussed above in Responses 5 and 9 to ensure Major NSR source BACT and LAER requirements are followed. No changes have been made to the rule as a result of this comment.

Comment 11: The EIP commented that flexible permit limits are not enforceable as a practical matter.

Response 11: The EPA disagrees with the commenter's assertion regarding enforceability of permit conditions. Information provided in Response 8 describes the requirements that flexible permits contain sufficient monitoring, recordkeeping, and reporting to demonstrate compliance. In addition, revised 30 TAC 116.715(c)(5) also states that each flexible permit specify requirements for monitoring or demonstrating compliance with emission caps and individual emission limits in the flexible permit and that each flexible permit shall specify methods for calculating annual and short term emissions for each pollutant for a given type of facility (unit). No changes have been made to the rule as a result of this comment.

Note: EIP raised a number of issues that are not directly relevant to this rulemaking. These issues cover use of Confidential Business Information, AP-42 emission factors, specific emission calculations and credible evidence rules. This rule does not directly address these subjects and they are outside the scope of this rulemaking.

Comment 12: The TCEQ commented that the EPA's discussion at Section II (last paragraph, 79, Federal Register 8373-8374) references 30 TAC Section 116.717 regarding adjustment of an emission cap but should most likely reference 30 TAC Section 116.715(c)(9).

Response 12: The EPA agrees with the TCEQ's comment that the incorrect citation was referenced in the February 12, 2014, Federal Register proposal. The correct citation is 30 TAC Section 116.715(c)(9).

III. When Is This Action Effective?

The EPA has determined that today's final conditional approval of the Texas Flexible Permit Program 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 the comments received and the responses to each comment provided above, and section 110 of the Act, the EPA is finalizing our conditional approval of the following revisions to the Texas SIP. In this final conditional approval we are revising the table at 40 CFR 52.2270(c) to reflect the approval of the following regulations into the Texas SIP: Revisions to 30 TAC Sections 39.402(a)(4) and (a)(5) – Applicability to applications for new and amended Flexible Permits – submitted July 2, 2010.
- Revisions to 30 TAC Section 116.10 – General Definitions – submitted March 13, 1996; Repealed, adopted and submitted July 22, 1998; Redesignated and submitted October 4, 2002; Amended 116.10(9)(E) – submitted October 5, 2010.
- Revisions to 30 TAC Section 116.13 – Flexible Permit Definitions – submitted November 29, 1994; Repealed, adopted and submitted July 22, 1998; Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.110 – Applicability – submitted November 29, 1994; Section 116.110(a)(3) Repealed, adopted and submitted July 22, 1998.
- Revisions to 30 TAC Section 116.710 – Applicability – submitted November 29, 1994; Revised and submitted July 22, 1998; Revised and submitted September 11, 2000.

- Revisions to 30 TAC Section 116.711 – Flexible Permit Application – submitted November 29, 1994; revised and submitted July 22, 1998; Added, redesignated and submitted April 12, 2001; Designated, added, revised and submitted September 4, 2002; and Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.714 – Application Review Schedule – submitted November 29, 1994; Revised and submitted July 22, 1998.
- Revisions to 30 TAC Section 116.715 – General and Special Conditions- Submitted November 29, 1994; Revised and submitted July 22, 1998; Revised and submitted September 11, 2000; Revised and submitted April 12, 2001; Revised and submitted September 4, 2002; Revised and submitted September 25, 2003.
- Revisions to 30 TAC Section 116.716 – Emission Caps and Individual Emission Limitations – submitted November 29, 1994; and Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.717 – Implementation Schedule for Additional Controls – submitted November 29, 1994.
- Revisions to 30 TAC Section 116.718 – Significant Emission Increase – submitted November 29, 1994.
- Revisions to 30 TAC Section 116.720 – Limitation on Physical and Operational Changes – submitted November 29, 1994.
- Revisions to 30 TAC Section 116.721 – Amendments and Alterations – submitted November 29, 1994; Revised and submitted July 22, 1998; Revised and submitted

September 11, 2000.

- Revisions to 30 TAC Section 116.722 – Distance Limitations – submitted November 29, 1994; Revised and submitted September 11, 2000.
- 30 TAC Section 116.730 – Compliance History – submitted November 29, 1994; Withdrawn October 21, 2013.
- Revisions to 30 TAC Section 116.740(a) – Public Notice and Comment – submitted November 29, 1994; Designated, added and submitted July 22, 1998; Revised and submitted October 25, 1999; and Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.750 – Flexible Permit Fee – submitted November 29, 1994; Revised and submitted July 22, 1998; Revised and submitted September 11, 2000; Revised and submitted October 4, 2002; and Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.760 Flexible Permit Renewal – submitted November 29, 1994.
- Revisions to 30 TAC Section 116.765 – Compliance Schedule – submitted October 21, 2013.

The EPA is also approving the December 9, 2013, Interpretative Letter into the Texas SIP and will revise the table at 40 CFR 52.2270(e) to reflect this approval.

The EPA is conditionally approving the Flexible Permit Program into the Texas SIP. This

is predicated on a commitment, as outlined in the December 9, 2013 Commitment Letter from the State, to adopt certain minor clarifications to the Flexible Permit Program by November 30, 2014, well within the one-year time limit in the statute. By taking our final action today, the Flexible Permit Program for the first time becomes an approved and thus a federally approved enforceable requirement in the Texas State Implementation Plan.

Upon receipt of the revised Flexible Permits Program as a revision to the Texas SIP, the EPA will evaluate it pursuant to our responsibilities under CAA section 110(k). If the EPA determines that the revised rule satisfies the December 9, 2013, Commitment Letter and was submitted in a timely manner, the EPA will provide notice in the **Federal Register** proposing to convert the conditional approval into a full approval in the Texas SIP. However, if the State fails to submit a SIP satisfying the commitments by the identified deadline, or if the EPA determines that the submitted SIP revision does not address the commitments, then the conditional approval will become a disapproval and the EPA will send a letter notifying the State that the SIP is disapproved. Because the Flexible Permit Program is discretionary and was not submitted to address a mandatory requirement of the Act, disapproval of the program will not trigger sanctions under Section 179(b) or start a Federal Implementation Plan clock.

As a result of our final conditional approval, and the associated revisions to 40 CFR 52.2270(c) and (e), EPA is also revising 40 CFR 52.2273 to remove paragraphs (c)(1) – (c)(3).

V. 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 conditionally approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 the 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 rule 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 the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The 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 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 from 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 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) CAA.)

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 26, 2014.

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:
 - a. In paragraph (c), the table titled “EPA Approved Regulations in the Texas SIP” is amended by revising the entries for Sections 39.402, 116.10, 116.110; adding an entry for Section 116.13 after the entry for Section 116.12; and adding a centered heading for “Subchapter G: Flexible Permits” after Section 116.620 followed by entries for Sections

116.710, 116.711, 116.714, 116.715, 116.716, 116.717, 116.718, 116.720, 116.721, 116.722, 116.740, 116.750, 116.760 and 116.765.

b. The second table paragraph (e) titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding an entry at the end of the table for a clarification letter dated December 9, 2013.

The revisions and additions 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
* * * * *	* * *			
Section 39.402	Applicability to Air Quality Permits and Permit Amendments	6/2/2010	[Insert date of FR publication] [Insert FR page number where document begins]	SIP includes 39.402(a)(1)-(a)(6).
* * * * *	* * *			
Section 116.10	Definitions	9/15/2010	[Insert date of FR publication] [Insert FR page number where document begins]	SIP includes 30 TAC Sections 116.10 (4), (5), (6), (7), (8). (9), (10), (11)(C), (11)(D), (12) – (15) and (17) as revised by the TCEQ on 8/21/2002. The

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
				SIP also includes 30 TAC Section 116.10(9)(E), the definition of “modification of existing facility” as it pertains to flexible permits as adopted on 9/15/2010.
* * * * *				
Section 116.13	Flexible Permit Definitions	9/24/2013	[Insert date of FR publication] [Insert FR page number where document begins]	
* * * * *				
Section 116.110	Applicability	8/9/2000	[Insert date of FR publication] [Insert FR page number where document begins]	SIP includes 30 TAC Sections 116.110(a)(1), (a)(2), (a)(4), (b), (e), (f), and (g) as revised on 8/9/2000. SIP includes 30 TAC Section 116.110(a)(3) adopted on 6/17/1998. SIP does NOT include 30 TAC Sections 116.110(a)(5) or (d).
* * * * *				
Subchapter G: Flexible Permits				
Section 116.710	Applicability	8/9/2000	[Insert date of FR	

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
			publication] [Insert FR page number where document begins]	
Section 116.711	Flexible Permit Application	9/24/2013	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.714	Application Review Schedule	6/17/1998	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.715	General and Special Conditions	9/24/2013	Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.716	Emission Caps and Individual Emission Limitations	9/24/2013	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.717	Implementation Schedule for Additional	11/16/1994	[Insert date of FR publication]	

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
	Controls		[Insert FR page number where document begins]	
Section 116.718	Significant Emission Increase	11/16/1994	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.720	Limitation on Physical and Operational Changes	11/16/1994	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.721	Amendments and Alterations	8/9/2000	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.722	Distance Limitations	8/9/2000	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.740	Public Notice and Comment	9/24/2013	[Insert date of FR publication] [Insert FR	SIP includes 30 TAC Section 116.740(a).

State citation	Title/Subject	State approval/Submittal date	EPA approval date	Explanation
			page number where document begins]	
Section 116.750	Flexible Permit Fee	9/24/2013	[Insert date of FR publication] [Insert FR page number where document begins]	
Section 116.760	Flexible Permit Renewal	11/16/1994		
Section 116.765	Compliance Schedule	9/24/2013	[Insert date of FR publication] [Insert FR page number where document begins]	SIP includes 30 TAC Section 116.765(b) and (c).
* * * * *				

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY
MEASURES IN THE TEXAS SIP

Name of SIP provisions	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* * * * *				

Flexible Permits Interpretative Letter from the TCEQ	Statewide	December 9, 2013	[Insert date of FR publication] [Insert FR page number where document begins]	Clarifies how the TCEQ implements the rules regarding 1) Director discretion; 2) BACT; 3) changes made by Standard Permits or Permits by Rule; 4) compliance with permit and permit application; and 5) start-up and shutdown emissions to ensure compliance with CAA requirements.
--	-----------	------------------	--	---

§ 52.2273 [Amended]

4. Section 52.2273 is amended by removing and reserving paragraph (c).

[FR Doc. 2014-16328 Filed 07/11/2014 at 8:45 am; Publication Date: 07/14/2014]