

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R06-OAR-2005-TX-0028; FRL-8897-3]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Particulate Matter Regulations**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions for the state of Texas. These revisions revise and recodify regulations for control of particulate matter in the Texas SIP. This rulemaking action is being taken under section 110 of the Federal Clean Air Act (CAA).

DATES: This rule is effective on May 28, 2009.

ADDRESSES: EPA has established a docket for this action under Docket No. EPA-R06-OAR-2005-TX-0028. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Joe Kordzi, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7186; fax number 214-665-

7263; e-mail address kordzi.joe@epa.gov.**SUPPLEMENTARY INFORMATION:**

Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

Outline

- I. What Is the Background?
 - A. Recent History of the Changes to 30 TAC Chapter 111
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- II. What Action Is EPA Taking?
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I. What Is the Background?*A. Recent History of the Changes to 30 TAC Chapter 111*

On October 28, 1999, we proposed to approve (1) a recodification of and revisions to the regulations for the control of particulate matter into the Texas SIP, and (2) the removal of the Texas Air Control Board, Board Seal rule from the Texas SIP and requested public comments on our action (64 FR 58006). A simultaneous notice of direct final rulemaking was also published (64 FR 57983). However, on November 29, 1999, we received an adverse comment concerning our proposal to replace 30 TAC 111.105.2, Ground Level Concentrations, with 30 TAC 111.155, Control of Air Pollution from Visible Emissions and Particulate Matter. We received no other comments on the direct final rulemaking. We therefore withdrew the particulate matter regulations’ part of the direct final rulemaking action on December 17, 1999 (64 FR 70593) to consider how to address the comment. We finalized approval of the second portion of the NPR, *i.e.*, the removal of the Board Seal rule from the Texas SIP, on March 30, 2005 (70 FR 16129) since there were no comments on our proposed approval.

Since our proposed approval, we have been in discussions with TCEQ regarding planned modifications to Chapter 111. On June 16, 2006, we received a request from the TCEQ to remove from consideration its previous request to replace 30 TAC 111.105.2 with 30 TAC 111.155 and to revise the Texas SIP by removing 30 TAC 105.2. In part, because of this request, we are not finalizing our proposed approval of TAC 111.155. We are finalizing our approval of the remaining sections of TAC Chapter 111 that we proposed approval of in 1999 as there were no comments on our proposed approval of these sections.

B. Recap of Our Previous 1999 Action on 30 TAC Chapter 111

The following is a recap of the particulate matter portion of the October 28, 1999 proposed action. The State repealed all of its existing particulate matter regulations and replaced them in Chapter 111, Sections 111.101 to 111.183, on June 16, 1989. The State revised the new sections in 1990, 1991 and 1993. We approved into the Texas SIP in 1994 and 1996 many of the new sections of Chapter 111, but not all of them. On August 21, 1996, the State made further formatting and reorganization changes by adding two Subchapters to Chapter 111, putting the open burning regulations under the new Subchapter B and all other sections into the new Subchapter A.

We proposed in October 1999 to approve the sections of the 1989 recodification of Chapter 111 and the 1990, 1991, and 1993 revisions that we had not previously approved. We also proposed to approve the 1996 Subchapter additions and reorganization changes. We proposed to approve the new recodified Sections 111.121, 111.151, 111.153 (with some substantive revisions), 111.155, 111.171 (with the deletion of Figure 3), 111.173, 111.175, 111.181, and 111.183. We also proposed to approve the 1996 moving and recodification of Sections 111.101, 111.103, 111.105, and 111.107 into a new Subchapter B as Sections 111.201, 111.203 (adding new definitions for clarity), 111.205, 111.207, 111.209 (clarifying the types of waste and allowing burning of diseased animal carcasses when burning is the most effective means to control the spread of disease), 111.211, 111.213 (adding new sampling and monitoring requirements), 111.215 (clarifying the burning cannot cause a nuisance condition or traffic hazard), 111.219, and 111.221.

Furthermore, we proposed to approve the 1996 moving and recodification of all of the remaining sections in Chapter 111 into the new Subchapter A.

Please refer to the 1999 **Federal Registers** for additional information concerning the nature of the proposed action to approve revisions and recodification to the particulate matter regulations.

II. What Action Is EPA Taking?

We are approving revisions to Regulation I in the Texas SIP adopted by the TACB on June 16, 1989, and submitted to EPA on August 21, 1989, concerning *Incineration, Emission Limits on Nonagricultural Processes* (with the exception of Section 111.155), *Emission Limits on Agricultural*

Processes, Exemptions for Portable or Transient Operations, and the repeal of Section 111.92, *Compliance Dates*.

We are also approving revisions, adopted by the Texas Natural Resources Commission (now TCEQ) March 29, 1995, and August 21, 1996, and submitted to EPA on July 12, 1995, and August 30, 1996, respectively. These revisions revise and move the Outdoor Burning sections of Regulation I into new *Subchapter B, Outdoor Burning*, and move the rest of the sections in Regulation I into new *Subchapter A, Visible Emissions and Particulate Matter*. This will bring the Texas particulate matter SIP more up to date in both format and substance and make the SIP more consistent with the State's rules which would enhance Federal enforcement.

III. 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 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 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 (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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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 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. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 29, 2009. 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 14, 2009.

Lawrence E. Starfield,
Acting Regional Administrator, Region 6.

■ 40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended by revising the entries under Chapter 111 to 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
*	*	*	*	*
Chapter 111 (Reg 1)—Control of Air Pollution from Visible Emissions and Particulate Matter				
Subchapter A: Visible Emissions and Particulate Matter				
Division 1: Visible Emissions				
Section 111.111(a), (b) ..	Requirements for Specified Sources	6/18/1993	5/8/1996, 61 FR 20732.	
Section 111.111(c)	Requirements for Specified Sources	10/25/1991	1/18/1994, 59 FR 2532.	
Section 111.113	Alternative Opacity Limitations	6/16/1989	5/8/1996, 61 FR 20732.	

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
Division 2: Incineration				
Section 111.121	Single-Chamber Incineration	6/16/1989	4/28/2009 [Insert FR page number where document begins].	
Division 4: Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots				
Section 111.141	Geographic Areas of Application and Date of Compliance.	10/25/1991	1/18/1994, 59 FR 02532.	
Section 111.143	Materials Handling	6/16/1989	1/18/1994, 59 FR 02532.	
Section 111.145	Construction and Demolition	10/25/1991	1/18/1994, 59 FR 02532.	
Section 111.147	Roads, Streets, and Alleys	10/25/1991	1/18/1994, 59 FR 02532.	
Section 111.149	Parking Lots	6/16/1989	1/18/1994, 59 FR 02532.	
Division 5: Emission Limits on Nonagricultural Processes				
Section 111.151	Allowable Emissions Limits	6/16/1989	4/28/2009 [Insert FR page number where document begins].	
Section 111.153	Emission Limits for Steam Generators	6/16/1989	4/28/2009 [Insert FR page number where document begins].	
Rule 105.2	Ground Level Concentrations	1/26/1972	5/31/1972, 27 FR 10842.	
Division 6: Emission Limits on Agricultural Processes				
Section 111.171	Emission Limits Based on Process Weight Method.	6/16/1989	4/28/2009 [Insert FR page number where document begins].	
Section 111.173	Emissions Limits Based on Alternate Method ...	6/16/1989	4/28/2009 [Insert FR page number where document begins].	
Section 111.175	Exemptions	6/16/1989	4/28/2009 [Insert FR page number where document begins].	
Division 7: Exemptions for Portable or Transient Operations				
Section 111.181	Exemption Policy	6/16/1989	4/28/2009 [Insert FR page number where document begins].	
Section 111.183	Requirements for Exemptions	6/16/1989	4/28/2009 [Insert FR page number where document begins].	
Subchapter B: Outdoor Burning				
Section 111.201	General Prohibitions	8/21/1996	4/28/2009 [Insert FR page number where document begins].	
Section 111.203	Definitions	8/21/1996	4/28/2009 [Insert FR page number where document begins].	
Section 111.205	Exceptions for Fire Training	8/21/1996	4/28/2009 [Insert FR page number where document begins].	
Section 111.207	Exceptions for Fires Used for Recreation, Ceremony, Cooking, and Warmth.	8/21/1996	4/28/2009 [Insert FR page number where document begins].	
Section 111.209	Exception for Disposal Fires	8/21/1996	4/28/2009 [Insert FR page number where document begins].	
Section 111.211	Exception for Prescribed Burn	8/21/1996	4/28/2009 [Insert FR page number where document begins].	

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
Section 111.213	Exception for Hydrocarbon Burning	8/21/1996	4/28/2009 [Insert FR page number where document begins].	
Section 111.215	Executive Director Approval of Otherwise Prohibited Outdoor Burning.	8/21/1996	4/28/2009 [Insert FR page number where document begins].	
Section 111.219	General Requirements for Allowable Outdoor Burning.	8/21/1996	4/28/2009 [Insert FR page number where document begins].	
Section 111.221	Responsibility for Consequences of Outdoor Burning.	8/21/1996	4/28/2009 [Insert FR page number where document begins].	
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[FR Doc. E9-9539 Filed 4-27-09; 8:45 am]

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