

concerning the processes established in the DoD ELAP or the DoD QSM. The DoD EDQW will document and resolve complaints promptly through the appropriate channels, consistently and objectively, and identify and implement any necessary corrective action arising from complaints. Complaints generally fall into one of four categories:

(i) Complaints by any party against an accredited laboratory.

(ii) Complaints by any party against an AB.

(iii) Complaints by any party concerning any assessor acting on behalf of the AB.

(iv) Complaints by any party against the DoD ELAP itself.

(2) *Limitations.* The procedures in this paragraph:

(i) Do not address appeals by laboratories regarding accreditation decisions by ABs. Appeals to decisions made by ABs regarding the accreditation status of any laboratory must be filed directly with the AB in accordance with agreements in place between the laboratory and the AB.

(ii) Are not designed to handle allegations of unethical or illegal actions as described in paragraph (d)(2)(iii) of this section.

(iii) Do not address complaints involving contractual requirements between a laboratory and its client. All contracting issues must be resolved with the contracting officer.

(3) *Procedures.* (i) All complaints must be filed in writing to the EDQW chair. All complaints must provide the basis for the complaint (*i.e.*, the specific process or requirement in the DoD ELAP or the DoD QSM that has not been satisfied or is believed to need changing) and supporting documentation, including descriptions of attempts to resolve the complaint by the laboratory or the AB.

(ii) Upon receipt of the complaint, the DoD EDQW chair will assign a unique identifier to the complaint, send a notice of acknowledgement to the complainant, and forward a copy of the complaint to the EDQW component principals.

(iii) In consultation with the EDQW component principals, the DoD EDQW chair will make a preliminary determination of the validity of the complaint. Following preliminary review, the actions available to the DoD EDQW chair include:

(A) If the DoD EDQW chair determines the complaint should be handled directly between the complainant and the subject of the complaint, the DoD EDQW will refer the complaint to the laboratory, or AB, as appropriate. The DoD EDQW will notify

the complainant of the referral, but will take no further action with respect to investigation of the complaint. The subject of the complaint will be expected to respond to the complainant in accordance with their established procedures and timelines. A copy of the response will be provided to the DoD EDQW.

(B) If insufficient information has been provided to determine whether the complaint has merit, the DoD EDQW will return the complaint to the complainant with a request for additional supporting documentation.

(C) If the complaint appears to have merit and the parties to the complaint have been unable to resolve it, the DoD EDQW will investigate the complaint and recommend actions for its resolution.

(D) If available information does not support the complaint, the DoD EDQW may reject the complaint.

(E) If the complaint alleges inappropriate laboratory practices or other misconduct, the DoD EDQW chair will consult legal counsel to determine the recommended course of action.

(iv) In all cases, the DoD EDQW will notify the complainant and any other entity involved in the complaint and explain the response of the EDQW to the complaint.

(4) *Continual Improvement.* The DoD EDQW will look into root causes and trends in complaints to help identify actions that should be taken by the DoD EDQW, or any parties involved with DoD ELAP, to prevent recurrence of problems that led to the complaints.

(5) *Data and Records Management.* Through NAVSEASYSKOM, the DoD EDQW will maintain copies of all complaint documentation in accordance with Secretary of the Navy Manual M-5210.1.

Dated: October 7, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2011-0864; FRL-9935-67-Region 6]

### Approval and Promulgation of Air Quality Implementation Plans; Texas; Infrastructure and Interstate Transport for the 2008 Lead National Ambient Air Quality Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** Under the Federal Clean Air Act (CAA) the Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) submission from the State of Texas for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS). The submittal addresses how the existing SIP provides for implementation, maintenance, and enforcement of the 2008 Pb NAAQS (infrastructure SIP or i-SIP). This i-SIP ensures that the State's SIP is adequate to meet the state's responsibilities under the CAA, including the four CAA requirements for interstate transport of Pb emissions.

**DATES:** Written comments must be received on or before November 16, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R06-OAR-2011-0864, by one of the following methods:

- *www.regulations.gov.* Follow the online instructions.

- *Email:* Tracie Donaldson at [Donaldson.tracie@epa.gov](mailto:Donaldson.tracie@epa.gov).

- *Mail or delivery:* Mary Stanton, Chief, Air Grants Section (6PD-S), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2011-0864. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit electronically any information that you consider to be CBI

or other information whose disclosure is restricted by statute. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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 information on submitting 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:**

Tracie Donaldson, telephone 214-665-6633, [Donaldson.tracie@epa.gov](mailto:Donaldson.tracie@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 wherever "we," "us," or "our" is used, we mean the EPA.

**I. Background**

On October 5, 1978, we published the first NAAQS for lead (Pb) (43 FR 46246). Both the primary and secondary standards were set at 1.5 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ). In 2008,

following a periodic review of the NAAQS for lead, we revised the NAAQS to 0.15  $\mu\text{g}/\text{m}^3$  for both the primary and secondary standards (73 FR 66964, November 13, 2008). For more information on these standards, please see the Technical Support Document (TSD) and EPA Web site <http://epa.gov/airquality/lead>.

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 October 14, 2011, the EPA issued guidance addressing the i-SIP elements for NAAQS.<sup>1</sup> The Chairman of the Texas Commission on Environmental Quality (TCEQ) submitted an i-SIP revision on October 14, 2011 to address this revised NAAQS for Pb and a separate September 14, 2011 SIP submission that addresses the interstate transport of Pb emissions.

EPA is proposing approval of the Texas i-SIP submittals for the 2008 Pb NAAQS<sup>2</sup> as meeting the requirements for an i-SIP, including the requirements for interstate transport of Pb emissions.

**II. EPA's Evaluation of the Texas' i-SIP and Interstate Transport Submittals**

The TCEQ submittals on September 14, 2011 and October 14, 2011 provided a demonstration of how the existing Texas SIP met all the requirements of the 2008 Pb NAAQS. These SIP submittals became complete by operation of law on March 14, 2012, and April 14, 2012, respectively pursuant to CAA section 110(k)(1)(B). Below is a summary of EPA's evaluation of the Texas i-SIP for each applicable element of CAA 110(a)(2) A–M.

**(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,

<sup>1</sup> "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) for the 2008 Pb NAAQS," Memorandum from Stephen D. Page, October 14, 2011, [http://epa.gov/air/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](http://epa.gov/air/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf).

<sup>2</sup> Additional information on: The history of Pb, its levels, forms and, determination of compliance; EPA's approach for reviewing i-SIPs; the details of the SIP submittal and EPA's evaluation; the effect of recent court decisions on i-SIPs; the statute and regulatory citations in the Texas SIP specific to this review; the specific i-SIP applicable CAA and EPA regulatory citations; **Federal Register** Notice citations for Texas SIP approvals; Texas' minor New Source Review program and EPA approval activities; and Texas' Prevention of Significant Deterioration (PSD) program can be found in the Technical Support Document (TSD).

maintain and enforce each of the NAAQS.<sup>3</sup>

The Texas Clean Air Act (TCAA) provides the TCEQ, its Chairman, and its Executive Director with broad legal authority. They can 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; 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 State Implementation Plan. The approved SIP for Texas is documented at 40 CFR part 52.1620, Subpart SS.<sup>4</sup> 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.<sup>5</sup>

**(B) Ambient air quality monitoring/data system:** The SIP must provide for establishment and implementation of ambient air quality monitors, collection and analysis of monitoring data, and providing such 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 Pb-monitoring network to measure ambient levels of Pb in accordance with EPA regulations which specify 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 EPA, following the EPA regulations. The Texas statewide monitoring network was initially approved into the SIP (37 FR 10842, 10895), was revised on March 7, 1978 (43 FR 9275), and it undergoes annual

<sup>3</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 2008 Pb NAAQS. 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>4</sup> <http://www.ecfr.gov/cgi-bin/text-idx?SID=64943a7422504656d8d72e9d6f87f177&mc=true&node=sp40.5.52.ss&rgn=div6>

<sup>5</sup> See the TSD page 4 for additional information.

review by EPA.<sup>6</sup> In addition, TCEQ conducts a recurrent assessment of its monitoring network every five years, which includes an evaluation of the need to conduct ambient monitoring for Pb, as required by EPA rules. The most recent of these 5-year monitoring network assessments was approved by EPA in December 2010.<sup>7</sup> The TCEQ Web site provides the monitor locations and posts past and current concentrations of criteria pollutants measured in the State's network of monitors.<sup>8</sup>

(C) *Program for enforcement:* 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).<sup>9</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>10</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 2008 Pb NAAQS and has been approved by EPA (79 FR 66626, November 10, 2014).<sup>11</sup>

(D) *Interstate and international transport:* The statute requires that the SIP contain adequate provisions prohibiting Pb emissions to other states which will (1) contribute significantly to nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with measures required to prevent significant deterioration or (4) interfere with measures to protect visibility (CAA 110(a)(2)(D)(i)).

With respect to significant contribution to nonattainment or interference with maintenance of the Pb NAAQS, the physical properties of Pb, which is a metal and very dense, prevent Pb emissions from experiencing a significant degree of travel in the ambient air. No complex chemistry is needed to form Pb or Pb compounds in the ambient air; therefore, ambient concentrations of Pb are typically highest near Pb sources. More specifically, there is a sharp decrease in ambient Pb concentrations as the distance from the source increases. According to EPA's report entitled *Our Nation's Air: Status and Trends Through 2010*,<sup>12</sup> Pb concentrations that are not near a source of Pb are approximately 8 times less than the typical concentrations near the source.<sup>13</sup> For these reasons, EPA believes that the interstate transport requirements pertaining to significant contribution to nonattainment or interference with maintenance of the Pb NAAQS can be satisfied through a state's assessment as to whether a lead source located within its state in close proximity to a state border has emissions that contribute significantly to the nonattainment in or

interfere with maintenance of the NAAQS in the neighboring state.

Texas submitted a separate SIP submission addressing the interstate transport provisions of subsection (2)(D)(i)(I), in which air dispersion modeling was conducted for seven operational sources in the state of Texas with the highest reported emissions of Pb in calendar year 2008: Fort Hood near Killeen; Oxbow Carbon in Port Arthur; ASARCO Refining near Amarillo; ECS Refining in Terrell; Exide Technologies in Frisco; Coletto Creek Power Station near Fannin; and the San Miguel Electric Cooperative near Christine. Two of these sources, Coletto Creek and San Miguel, reported emissions of Pb between 0.5 and 1.0 tons in 2008, and the remaining five sources reported emissions equal to or exceeding 1.0 ton. The modeled lead emissions from Coletto Creek and San Miguel each result in ambient concentrations of less than 1% of the level of the 2008 Pb NAAQS and indicate that there will be no impact on surrounding states. The Fort Hood and Oxbow model results predict levels of less than 15% of the NAAQS. For Exide Technologies, ECS Refining, and ASARCO Refining, the predicted concentrations dropped to below half the level of the NAAQS within 2 kilometers of the property line. For more detailed information on these modeling results, see the TSD and the Interstate Transport SIP submission in the docket for this rulemaking.

The Frisco Texas area is the one area within the state of Texas that is designated as nonattainment with respect to the 2008 Pb NAAQS. Exide Technologies battery recycling center was the sole contributing source responsible for the ambient Pb concentrations that led to the nonattainment designation. However, the source has been permanently shut down. During calendar year 2011 there were eight significant sources of Pb emissions within Texas that reported Pb emissions in amounts approximately equal to or exceeding 0.5 tons per year, including the aforementioned Exide Technologies in Frisco; however, none of these sources of Pb emissions are located within two miles of a neighboring state line. Total reported Pb emissions within Texas in 2011 were 31.2 tons,<sup>14</sup> and most of the Pb-emitting sources within the state are general aviation airports where aviation gasoline containing tetra-ethyl lead is

<sup>6</sup> A copy of the 2014 Annual Air Monitoring Network Plan and EPA's approval letter are included in the docket for this proposed rulemaking.

<sup>7</sup> A copy of TCEQ's 2010 5-year ambient monitoring network assessment and EPA's approval letter are included in the docket for this proposed rulemaking.

<sup>8</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>9</sup> As discussed in further detail in the TSD beginning on page 6.

<sup>10</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 (*e.g.*, 76 FR 41076–41079). EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs.

<sup>11</sup> As discussed further in the TSD

<sup>12</sup> <http://www.epa.gov/airtrends/2011/>.

<sup>13</sup> <http://www.epa.gov/airtrends/2011/report/fullreport.pdf>.

<sup>14</sup> See the TSD and the docket for this rulemaking for more detailed information on Pb-emitting sources in Texas and the Pb emissions reported in calendar year 2011.

still in use by propeller-driven aircraft. Therefore, EPA finds that Texas has presumptively satisfied the requirements of subsection (2)(D)(i)(I).

The necessary provisions under section 110(a)(2)(D)(i)(II) are contained in the PSD portion of the SIP, as discussed with respect to element (C) above. With regard to the applicable requirements for visibility protection of visibility under subsection (2)(D)(i)(II), significant impacts from Pb emissions from stationary sources are expected to be limited to short distances from emitting sources and most, if not all, stationary sources of Pb emissions are located at sufficient distances from Class I areas such that visibility impacts would be negligible. Although Pb can be a component of coarse and fine particles, Pb generally comprises only a small fraction of these particles. A recent EPA study conducted to evaluate the extent that Pb could impact visibility concluded that Pb-related visibility impacts at Class I areas were found to be insignificant (*e.g.*, less than 0.10% contribution).<sup>15</sup>

The Texas SIP includes provisions that satisfy the CAA interstate pollution abatement requirements of 110(a)(2)(D)(i)(II). There are no findings by EPA that air emissions originating in Texas affect other countries. Therefore, we propose to approve the portion of the Texas SO<sub>2</sub> i-SIP 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.

This i-SIP submission for the 2008 Pb 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 Federal 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 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 sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from 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 "Texas Air Quality Control Contingency Plan for Prevention of Air Pollution Episodes" is part of the Texas SIP. However, because of the low levels of Pb emissions emitted and monitored statewide, Texas is not required to have contingency plans for the 2008 Pb NAAQS. However, to provide additional protection, the State has general emergency powers to address any possible dangerous Pb-related air pollution episode if necessary to protect the environment and public health.

*(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.

<sup>15</sup> Analysis by Mark Schmidt, OAQPS, "Ambient Pb's Contribution to Class I Area Visibility Impairment," June 17, 2011.

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.

Texas currently has one nonattainment area for the 2008 Pb NAAQS, located in the city of Frisco in Collin County. For more information on the Frisco nonattainment area and past nonattainment areas under the 1978 Pb NAAQS, please refer to the TSD for this rulemaking.

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 part D attainment plan SIP submissions, including the attainment plan submission for the Frisco nonattainment area, 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; (2) section 127 relating to public notification of NAAQS exceedances and related issues; and, (3) prevention of significant deterioration of air quality and 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 must be 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 Managers (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, and 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 major new or modifying source prior to the submission of a permit application. Likewise, the State's Transportation Conformity SIP rules provide procedures for interagency consultation, resolution of conflicts, and public notification.

(2) *Public Notification:* The i-SIP submission from Texas provides 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 Web site provides quality data for each of the monitoring stations in Texas; this data is provided instantaneously for certain pollutants, such as ozone. The Web site 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 and regional haze 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 Pb NAAQS in 2008, 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 authority and duty under the TCAA to investigate and develop facts providing for the functions of environmental air quality assessments. 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 the primary and secondary Pb standards and other criteria pollutant NAAQS on a case-by-case permit basis consistent with their SIP-approved PSD rules and EPA guidance. As discussed with regard to element (D) above, TCEQ has conducted air quality dispersion modeling on the emissions of Pb from numerous stationary sources to determine the impact of such emissions on air quality in neighboring states. TCEQ has also conducted extensive modeling on the emissions of Pb from the former Exide Technologies facility located in the Frisco nonattainment area and has prepared and submitted an attainment demonstration with a control strategy based on the results of this modeling to the EPA.

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. The fees 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 such a time when a fee program is established by the state pursuant to Title V of the CAA, and is submitted to and 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 the 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.

#### IV. Proposed Action

EPA is proposing to approve the October 14, 2011 infrastructure SIP and the September 14, 2011 interstate transport submissions from Texas, which address the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2008 Pb NAAQS. Specifically, EPA is proposing to approve the following infrastructure elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is not acting on the submittal pertaining to CAA section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions because EPA believes these need not be addressed in the i-SIP. Based upon review of the state's infrastructure and interstate transport SIP submissions, in light of the relevant statutory and regulatory authorities and provisions referenced in these submissions or referenced in the 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 2008 Pb NAAQS are implemented in the state. We also are proposing to approve the State's demonstration that it meets the four statutory requirements for interstate transport of Pb emissions.

#### V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the 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);
- 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).

EPA is not proposing to approve this infrastructure SIP certification 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, this proposed approval of an infrastructure SIP certification does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, Intergovernmental relations,

Lead (Pb), Reporting and recordkeeping requirements.

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

Dated: September 30, 2015.

**Ron Curry,**

*Regional Administrator, Region 6.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 224

RIN 0648-XD314

#### Finding for a Petition To Exclude Federally-Maintained Dredged Port Channels From New York to Jacksonville From Vessel Speed Restrictions Designed To Reduce Vessel Collisions With North Atlantic Right Whales

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Petition finding.

**SUMMARY:** NMFS received a petition to exclude federally-maintained dredged channels and pilot boarding areas (and the immediately adjacent waters) for ports from New York to Jacksonville from the vessel speed restrictions that were established to reduce the threat of vessel collisions with North Atlantic right whales. After reviewing the information in the petition and public comments thereon, NMFS finds that the petition does not present substantial information indicating that that exclusion of these areas is necessary to address the concerns, and denies the petition. NMFS will review and revise our existing compliance guide to provide clarifying information about the navigational safety exception (*i.e.*, the October 10, 2008, final rule's deviation provision) for the speed restrictions.

**DATES:** October 15, 2015.

**ADDRESSES:** Notice of receipt of the petition, information related to the previous request for public comment, and related information is available at: <http://www.nmfs.noaa.gov/pr/shipstrike/>.

**FOR FURTHER INFORMATION CONTACT:** Gregory Silber, Office of Protected Resources, Silver Spring, MD (301) 427-8402.

**SUPPLEMENTARY INFORMATION:**