

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C.1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; and 49 CFR 1.46.

2. A new § 165.T09–998 is added to read as follows:

#### **§ 165.T09–998 Security Zone: Selfridge Army National Guard Base, Michigan.**

(a) *Location.* The following area is a Security Zone: The waters off Selfridge Army National Guard Base in Michigan one half mile from shore between the Hall Road Launch Ramp and the entrance to Mac and Rays Marina.

(b) *Effective dates.* This section becomes effective at 2 p.m. September 11, 2001.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of this regulation and other applicable laws.

(3) Commercial vessels may request permission to transit the safety zone from the Captain of the Port Detroit. Approval in such cases will be case by case. Request must be made in advance to and approved by the Captain of the

Port before such transits will be authorized.

Dated: September 11, 2001.

**P.G. Gerrity,**

*Commander, U.S. Coast Guard, Captain of the Port Detroit.*

[FR Doc. 01–23712 Filed 9–21–01; 8:45 am]

**BILLING CODE 4910–15–U**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[TX–104–1–7401a; FRL–7063–2]

### **Approval and Promulgation of Implementation Plans; Texas; Revisions to General Rules and Regulations for Control of Air Pollution by Permits for New Sources and Modifications**

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is taking direct final action to approve revisions of the Texas State Implementation Plan (SIP). Specifically, EPA is approving revisions to regulations of the Texas Natural Resource Conservation Commission (TNRCC) which relate to definitions in Texas’ general rules and to regulations relating to the permitting of new sources and modifications. The revisions that EPA is approving in this action are to recodify several provisions of the existing SIP without substantive changes and approve provisions for permit alterations which will strengthen the SIP as it pertains to the permitting of new and modified sources. Approval of these revisions will bring the federally approved SIP, which pertains to the permitting of new and modified sources more closely in line with the Texas’ existing program. This action will better serve the State, the public, and the regulated community by making the approved SIP more closely match the rules that Texas currently implements. The approval of these revisions is independent of, and will not adversely affect, other SIP actions that EPA and TNRCC are currently undertaking to ensure the attainment and maintenance of air quality in the Dallas-Fort Worth, Houston-Galveston, and Beaumont-Port Arthur regions of Texas. Except where otherwise noted, EPA is approving revisions which Texas submitted in 1998 to the extent that they are equivalent to revisions that Texas previously submitted in 1993. Where noted, EPA is acting on provisions which Texas submitted in 1993. Finally,

EPA is taking no action on certain provisions which relate to emissions reduction credits and offsets, permit exemptions, permit renewals, and emergency orders, which are not in the current SIP and for reasons discussed in the Supplementary Information.

**DATES:** This rule is effective on November 23, 2001 without further notice, unless EPA receives adverse comment by October 24, 2001. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Please address written comments on this action to Ms. Jole C. Luehrs, Chief, Air Permits Section, Attention: Stanley M. Spruiell, at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

EPA, Region 6, Air Permits Section (6PD-R), 1445 Ross Avenue, Dallas, Texas 75202-2733

TNRCC, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753

**FOR FURTHER INFORMATION CONTACT:** Stanley M. Spruiell of the Air Permits Section at (214) 665-7212, or at [spruiell.stanley@epa.gov](mailto:spruiell.stanley@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” or “our” means EPA. Please note that if we receive adverse comment(s) on an amendment, paragraph, or section of this rule and if that provision is independent of the remainder of the rule, we may adopt those provisions of the rule that are not the subject to the adverse comment.

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### I. What Action Are We Taking?

In today's action, we are approving into the SIP revisions of 30 Texas Administrative Code (TAC), Chapter 101, “General Rules” and Chapter 116, “Control of Air Pollution by Permits for New Construction or Modification.” The Governor of Texas submitted the following revisions to Chapters 101 and 116 to the Administrator of EPA after adequate notice and public hearing:

A. On August 31, 1993 (the “1993 submittal”). The 1993 submittal includes revisions adopted by Texas on August 16, 1993. It revises Chapters 101 and 116. Specifically, the 1993 submittal includes the following:

- Revisions to the General Rules in 30 TAC Chapter 101, section 101.1—Definitions.
- Revisions to and recodification of Chapter 116. The 1993 submittal serves as the base regulation for subsequent revisions that TNRCC has adopted, or will adopt.

B. July 22, 1998 (the “1998 submittal”). This submittal includes revisions adopted by TNRCC on June 17, 1998. It includes the following:

- Provisions for implementing section 112(g) of the Act, and includes a new section 116.15—section 112(g) definitions, and a new subchapter C—Hazardous Air Pollutants: Regulations Governing Construction or Reconstruction Major Sources (Federal Clean Air Act (FCAA), section 112(g), 40 CFR part 63). We are taking no action on subchapter C.

- Changes which TNRCC made under its regulatory reform to simplify and clarify its rules. These changes which do not involve substantive changes include: (1) Using shorter sentences, (2) limiting each citation to one main concept, (3) reordering requirements into a more logical sequence, and (4) using more commonplace terminology.<sup>1</sup>

In today's action, we are approving the revisions to Chapter 116 as revisions to the Texas SIP as described herein.

We have prepared a Technical Support Document (TSD) which contains a detailed analysis of our evaluation of this action. The TSD is included as part of the public docket and is available at the addresses listed above.

### II. What Actions Are We Taking on Chapter 101?

The 1993 submittal included revisions to Chapter 101, section 101.1 (Definitions). Texas revised the definition of the term “nonattainment area.” Texas also removed several terms which relate to permitting major sources and major modifications in nonattainment areas, and simultaneously recodified those definitions into section 116.12.<sup>2</sup>

Table 1 below summarizes our evaluation of each definition in section 101.1 that we are approving in today's action.

TABLE 1.—SUMMARY OF EVALUATION OF THE DEFINITIONS IN SECTION 101.1

Regulation	Title/(subject)	Comments
101.1 .....	General Definitions (Introductory paragraph) .....	a
101.1 .....	—Nonattainment area .....	b
101.1 .....	—De minimis impact .....	c

a—No substantive changes to approved provision. This provision continues to meet the Act.

b—Revised definition. We have determined that the revised definition is consistent with the Act.

c—Reinstatement of definition inadvertently deleted from the approved SIP on August 19, 1997 (62 **Federal Register** 44083).

The submitted definition of “nonattainment area” is different from the definition submitted May 13, 1992, which EPA approved September 27,

1995 (60 FR 49781). The TNRCC reworded the definition to avoid using the defined word “nonattainment” within the definition. As submitted,

TNRCC now defines “nonattainment area” as a region within the State which EPA has designated, under section 107(d) of the Clean Air Act (the “Act”),

<sup>1</sup> The 1998 submittal also includes provisions which TNRCC adopted subsequent to the 1993 submittal but not yet approved by EPA. Except where otherwise indicated, we are taking no action

on revisions made after the 1993 submittal which are not substantially equivalent to the 1993 submittal until we complete our review of these subsequent revisions.

<sup>2</sup> We approved the nonattainment definitions in section 116.12 and the removal of such terms from section 101.1 in a separate action at 65 FR 43986 (July 17, 2000).

as failing to meet a national ambient air quality standard for a pollutant for which a standard exists. The revised definition continues to be substantially equivalent to the definition of "nonattainment area" as defined in section 171(2) of the Act.

The 1993 submittal also includes the definition of "*de minimis* impact" in section 116.10. Texas repealed the definition from section 116.10 in the 1998 submittal. In a separate action, we approved this definition in section 116.10 as submitted in 1993 at 62 FR 44083 (August 19, 1997). In that action, we inadvertently removed the same

definition from section 101.1.

Subsequently, we discovered that Texas had retained the term "*de minimis* impact" in section 101.1. By this action, we are reinstating the definition of "*de minimis* impact" into section 101.1 as approved at 56 FR 46117 (September 10, 1991) and approving the repeal of the same definition from section 116.10 which Texas submitted in the 1998 submittal.

### III. Why Are We Approving the Revisions to Chapter 116?

Approval of these revisions to Chapter 116 will bring the federally approved

SIP for Chapter 116 more closely in line with the Chapter as it currently exists in the State's program. Our approval of these revisions will also facilitate future revisions to Chapter 116, by enabling us to approve them into the current organizational structure. This approval also better serves the State, the public, and the regulated community by making the approved SIP more closely match the rules that Texas currently implements.

As revised August 16, 1993, and June 17, 1998, Chapter 116 is organized as indicated in Table 2 below:

TABLE 2.—ORGANIZATION OF CHAPTER 116<sup>a</sup>

Citation	Title
Subchapter A .....	Definitions.
Subchapter B .....	New Source Review Permits.
Division 1 .....	Permit Application.
Division 2 .....	Compliance History.
Division 3 .....	Public Notification and Comment Procedures.
Division 4 .....	Permit Fees.
Division 5 .....	Nonattainment Review.
Division 6 .....	Prevention of Significant Deterioration Review.
Division 7 .....	Emission Reductions: Offsets.
Subchapter C <sup>b</sup> .....	Permit Exemptions.
Subchapter D <sup>b</sup> .....	Permit Renewals.
Subchapter E <sup>b</sup> .....	Emergency Orders.

<sup>a</sup> This organization of Chapter 116 is the organization that Texas has submitted. As will be discussed herein, we are not acting on all provisions that Texas has submitted.

<sup>b</sup> The EPA is taking no action on subchapters C and E in today's action.

### IV. Have We Approved Any Portions of the 1993 Submittal Prior to Today's Action?

We previously approved portions of the 1993 submittal in separate actions as indicated in Table 3 below.

TABLE 3.—PROVISIONS OF AUGUST 31, 1993, SUBMITTAL OF CHAPTER 116, PREVIOUSLY APPROVED BY EPA

State citation	Title	Federal Register (FR) publication date and page No.
<b>Subchapter A—Definitions</b>		
Section 116.10 .....	General Definitions .....	62 FR 44083 (August 19, 1997)
Section 116.12 .....	Nonattainment Review Definitions .....	60 FR 49781 (September 27, 1995) and 65 FR 43986 (July 17, 2000).
<b>Subchapter B—New Source Review Permits</b>		
<b>Division 4—Permit Fees</b>		
Section 116.141, Subsections (a), and (c)–(e) ..	Determination of Fees .....	62 FR 44083 (August 19, 1997).
<b>Division 5—Nonattainment Review</b>		
Section 116.150 .....	New Major Source or Major Modification in Ozone Nonattainment Area.	65 FR 43986 (July 17, 2000).
Section 116.151 .....	New Major Source or Modification in Nonattainment Area Other than Ozone.	65 FR 43986 (July 17, 2000).
<b>Division 6—Prevention of Significant Deterioration Review</b>		
Section 116.160 .....	Prevention of Significant Deterioration Review Requirements.	62 FR 44083 (August 19, 1997).
Section 116.161 .....	Source Located in an Attainment Area with Greater than De Minimis Impact.	62 FR 44083 (August 19, 1997).
Section 116.162 .....	Evaluation of Air Quality Impacts .....	62 FR 44083 (August 19, 1997).
Section 116.163 .....	Prevention of Significant Deterioration Permits Fees.	62 FR 44083 (August 19, 1997).

TABLE 3.—PROVISIONS OF AUGUST 31, 1993, SUBMITTAL OF CHAPTER 116, PREVIOUSLY APPROVED BY EPA—  
Continued

State citation	Title	Federal Register (FR) publication date and page No.
<b>Division 7—Emission reduction: Offsets</b>		
Section 116.170, and Subsections (1) and (3) ..	Applicability of Reduction Credits .....	65 FR 43986 (July 17, 2000).

With respect to the sections identified in Table 3 above, today's action approves the codification of these provisions into the organization structure adopted in 1998 submittal and any nonsubstantive changes to the previously approved provisions.

#### V. Are We Approving All Provisions of Chapter 116?

No. We are taking no action on the provisions of Chapter 116 identified in Table 4 below.

TABLE 4.—PROVISIONS OF CHAPTER 116 FOR WHICH EPA IS TAKING NO ACTION

Citation of Chapter 116 <sup>a</sup>	Title/subject	Reason for taking no action
<b>Subchapter A—Definitions</b>		
Section 116.10 (1993 submittal) .....	General Definitions Definitions of "de minimis impact" and "emissions unit" .....	b
Section 116.10(1) .....	Definition of "actual emissions" .....	c
Section 116.10(2) .....	Definition of "allowable emissions" .....	c
Section 116.10(3) .....	Definition of "best available control technology" .....	c
Section 116.10(4) .....	Definition of "facility" .....	c
Section 116.10(6) .....	Definition of "grandfathered facility" .....	c
Section 116.10(8) .....	Definition of "maximum allowable emission rate table (MAERT)" .....	c
Section 116.10(9) .....	Definition of "modification of existing facility" .....	c
Section 116.10(10) .....	Definition of "new facility" .....	c
Section 116.10(14) .....	Definition of "qualified facility" .....	c
Section 116.13 .....	Flexible Permit Definitions .....	c
Section 116.14 .....	Standard Permit Definitions .....	c
Section 116.15 .....	Section 112(g) Definitions .....	d
<b>Subchapter B—New Source Review Permits</b>		
<b>Division 1—Permit Application</b>		
Section 116.110(a)(2) .....	New Source Review (NSR) permit not required if source satisfies condition for standard permit.	c
Section 116.110(a)(3) .....	(NSR) permit not required if source satisfies condition for flexible permit .....	c
Section 116.110(b) (1993 submittal) .....	Operations Certificate (repealed from Section 116.110 in 1998 submittal) .....	b
Section 116.110(c) .....	Exclusions from permitting .....	c
Section 116.111(2)(K) .....	Hazardous Air Pollutants .....	d
Section 116.115(b) .....	General Conditions .....	c
Section 116.115(c)(2)(A)(i) .....	Special conditions for sources subject to standard permits .....	c
Section 116.115(c)(2)(B)(ii)(I) .....	Special conditions for sources subject to Subchapter C (Hazardous Air Pollutants)	d
Section 116.116(b)(3) .....	Changes at Section 112(g) facilities .....	d
Section 116.116(e) .....	Changes to qualified facilities .....	c
Section 116.116(f) .....	Use of credits .....	c
Section 116.117 .....	Documentation and Notification of Changes to Qualified Facilities .....	c
Section 116.118 .....	Pre-Change Qualification .....	c
<b>Division 3—Public Notice</b>		
Section 116.130(c) .....	Applications subject to the requirements of Subchapter C of Chapter 116 (relating to Hazardous Air Pollutants).	d
Section 116.132(c) .....	Additional alternate language public notice .....	c
Section 116.132(d) .....	Exemptions from alternate language notification .....	c
Section 116.133(f) .....	Alternate language sign posting .....	c
Section 116.133(g) .....	Exemptions from alternate language sign posting .....	c
Section 136 .....	Public Comment Procedures .....	c
<b>Division 7—Emission Reductions: Offsets</b>		
Section 116.170(2) .....	Applicability for Reduction Credits .....	e
Section 116.174 .....	Determination by the Executive Director to Authorize Reductions .....	e
Section 116.175 .....	Recordkeeping .....	e
<b>Subchapter C—Permit Exemptions (1993 submittal)</b> .....		f
<b>Subchapter C—Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, section 112(g), 40 CFR part 63).</b>		d

Subchapter D—Permit Renewals .....	g
Subchapter E—Emergency Orders .....	h
Subchapter F—Standard Permits .....	c
Subchapter G—Flexible Permits .....	c

a Except where otherwise noted, this refers to a provision contained in the 1998 submittal.

b Provisions repealed from Chapter 116 in the 1998 submittal.

c Not equivalent to 1993 submittal. See discussion in section VI.A of this preamble.

d Implementation of section 112(g) is carried out separately from the SIP activities. See discussion in section VI.B of this preamble.

e As described in section VI.C of this preamble.

f As described in section VI.D of this preamble.

g As described in section VI.E of this preamble.

h As described in section VI.F of this preamble.

## VI. Why Are We Taking No Action on the Provisions Identified Above?

### A. General Comments

As mentioned above, we are approving the 1998 submittal to the extent that it is equivalent to the 1993 submittal. The 1998 submittal includes new provisions as well as numerous changes that the TNRCC adopted subsequent to the 1993 submittal and carried forward into the 1998 submittal. We are still reviewing the new provisions and the provisions carried forward from rulemaking actions adopted subsequent to the 1993 submittal. However, if we wait until we complete our review and evaluation of these provisions, we would have to delay action on the portions of the 1998 submittal that we consider to be approvable. As stated above, we believe that it is important to act on the provisions of the 1998 submittal that are consistent with the 1993 submittal to ensure that the approved SIP more closely matches the rules that the TNRCC administers and enforces.

Accordingly, today's action approves the 1998 submittal to the extent that the 1998 submittal is equivalent to the provisions of the 1993 submittal that we are approving. We are taking no action on the provisions of the 1998 submittal that are not equivalent to the 1993 submittal, except where otherwise indicated.<sup>3</sup>

We are reviewing the provisions which we are not acting upon today. When we complete our review, we will take appropriate action on these provision in separate **Federal Register** actions. The TSD contains a detailed evaluation which documents why we are taking no action on these provisions.

### B. Provisions Implementing Section 112(g) of the Act Concerning Constructed or Reconstructed Major Sources of Hazardous Air Pollutants (HAP)

We are taking no action on subchapter C of Chapter 116—Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, section 112(g), 40 CFR part 63), as submitted with the 1998 submittal. The program for reviewing and permitting constructed and reconstructed major sources of HAP is regulated under section 112 of the Act and under 40 CFR part 63, subpart B. Under these provisions, States establish case-by-case determinations of maximum achievable control technology for new and reconstructed major sources of HAP. The process for these provisions is carried out separately from the SIP activities. We are thus taking no action on subchapter C of Chapter 116 in today's action.

### C. Emission Reductions: Offsets

In letters to TNRCC dated August 3, 1999, and September 27, 2000, we informed TNRCC that we had concerns relating to the approval of sections 116.170(2), 116.174, and 116.175.

On the basis of subsequent discussions with TNRCC on August 15, 2000, EPA and TNRCC have agreed that it is appropriate to take no action on sections 116.170(2), 116.174, and 116.175 in today's direct final approval. Our letter to TNRCC on September 27, 2000, confirmed this understanding. We will act on these provisions in a separate action after TNRCC resolves the outstanding concerns to our satisfaction. Additional information regarding our concerns with these provisions is contained in the TSD.

### D. Permit Exemptions

On December 29, 1998, TNRCC requested that we delay action on approving subchapter C—Permit Exemptions as submitted in 1993. In a subsequent letter dated April 26, 1999, TNRCC provided its reason for requesting us to delay approval of subchapter C. Texas requested the delay

because of several bills that were before the Texas Legislature which, if passed and signed into law, would affect the new source permitting structure, including the exemptions from permitting. These bills were passed and signed into law. The TNRCC is currently in the process of developing regulations to implement the new permitting structure which includes changes to the exemptions from permitting. Because we anticipate that Texas will significantly revise and restructure its provisions for exemptions from permitting and subsequently submit the changes to us as SIP revisions, we will delay action on subchapter C (as submitted in 1993) pending the submission of these SIP revisions.

Because we are taking no action on subchapter C as submitted in 1993, the following TNRCC regulation remains in the Texas SIP: section 116.6 (Exemptions) as approved by EPA on August 13, 1982 (47 FR 35193).

### E. Permit Renewals

The governor submitted subchapter D (Permit Renewals) of Chapter 116 in the 1993 submittal. However, the 1998 submittal incorporates revisions that Texas adopted after the 1993 submittal and which we have not approved. The changes significantly revise subchapter D to the extent that it is not equivalent to subchapter D as submitted in the 1993 submittal. We have not completed our review of these changes and are therefore taking no action on subchapter D in today's action. We will act on subchapter D in a separate action following our review of the changes adopted subsequent to the 1993 submittal.

### F. Emergency Orders

The Governor submitted subchapter E (Emergency Orders) as part of the 1993 submittal. An emergency order authorizes the immediate action for the addition, replacement, or repair of facilities or control equipment, and authorizes the associated emissions of air contaminants, whenever a catastrophic event necessitates such construction. An applicant that qualifies

<sup>3</sup> In some cases provisions of the 1998 submittal are readily recognized to be consistent with the Act and have the effect of strengthening the SIP even though they are not equivalent to the 1993 submittal. These provisions are identified in the TSD and where identified are being approved in today's action.

for an emergency order would need to submit an application under the requirements of section 116.411.

On December 10, 1998, the Governor of Texas submitted SIP revisions pertaining to Emergency Orders. In that submittal, Texas recodified and revised the provisions pertaining to Emergency Orders into 30 TAC chapter 35. We are still reviewing the December 10, 1998, SIP revisions. We will act on the provisions relating to Emergency Orders in a separate action.

In letters to TNRCC dated August 3, 1999, and September 27, 2000, we identified concerns related to subchapter E, submitted August 31, 1993, and with the revisions submitted December 10, 1998.

To date, TNRCC has not addressed our concerns. On the basis of subsequent discussions with TNRCC on August 15, 2000, the EPA and TNRCC have agreed that it is appropriate to take no action on subchapter E, submitted August 31, 1993, and the SIP revisions submitted December 10, 1998, in today's direct final approval. Our letter to TNRCC on September 27, 2000, confirmed this understanding. We will act on these provisions in a separate action after TNRCC resolves the outstanding concerns to our satisfaction. Additional information regarding our concerns with these provisions is contained in the TSD.

#### VII. Are We Approving Provisions That Did Not Exist in the Former SIP?

We are approving subsection (c) in section 116.116. This subsection sets forth provisions for permit alterations. This subsection defines a permit

alteration as a variation to a representation in a permit application or in a general or special condition of a permit that decreases the allowable emissions or does not change the character or method of control of emissions. The TNRCC must approve any request for permit alteration which may result in an increase in off-property concentrations of air contaminants, may involve a change in permit conditions, or may affect facility or control equipment performance. Changes subject to permit alterations are non-substantive and involve no emissions increase. Alterations only apply to nonsubstantive changes to a permitted emission unit. Like kind replacement of emissions units and new emission units are not allowed under the permit alteration provisions. Permit alterations are not granted for changes which qualify for permit amendments under section 116.116(b). Such permit amendment is required for any change which involves an increase in emissions or a change in the method of control. Examples of changes eligible for permit alterations include: (1) Changes to a special condition in a permit to add an annual production rate for a unit that was inadvertently left out, (2) revising an emission point to show fugitive emissions and emissions from a newly installed control device as two separate emission points, and (3) changes to a special condition to reflect that primary seals for external floating roof tanks may be liquid-mounted primary seals or mechanical shoes. The use of alterations is limited only to changes which involve no increase in emissions and no changes in the method of control.

Accordingly, such changes will not result in a violation of the applicable portion of the control strategy<sup>4</sup> or interfere with attainment or maintenance of a national standard, thus meeting the requirements of 40 CFR 51.160.<sup>5</sup> Subsection (c) as submitted in 1998 is equivalent to the 1993 submittal.

#### VIII. What Is the Effect of Today's Action?

This action approves the recodification of several provisions of Texas regulations for permitting new and modified sources as submitted August 31, 1993. Today's action replaces several outdated Sections of the former SIP and with new Sections under the current numbering system used for Chapter 116. By approving these revisions, the SIP-approved version of Chapter 116 more closely correlates with the numbering system currently used by Texas.

#### IX. What Texas SIP Regulations Are Being Replaced by This Action?

Table 5 below cross-references the provisions that we are approving to the corresponding provisions in the former SIP. Table 5 identifies the new SIP citation, the former SIP citation, the adoption date of the section that we are approving, the title of the Section, and any explanatory notes. Where noted, the "explanation" column may identify the portions of the "New SIP Citation" which we are not approving in today's action. The reasons for not approving such provisions, as identified in the "explanation" column, are provided in section VI of this preamble.

TABLE 5.—PROVISIONS OF 30 TAC THAT WE ARE APPROVING INTO TEXAS' SIP

New SIP citation	Former SIP citation	Dated adopted by State	Title	Explanation
<b>Chapter 101—General Rules</b>				
Section 101.1 .....	Same .....	08/16/93	Definitions .....	This action approves the revised definition of "non-attainment area" and reinstates the definition of "de minimis impact."
<b>Chapter 116—Control of Air Pollution by Permits for New Construction or Modification</b>				
<b>Subchapter A—Definitions</b>				
Section 116.10 .....	Sections 101.1, 116.3(a)(1)(B), and 116.14(a)(7).	06/17/98	General Definitions .....	The New SIP Citation does not include Sections 116.10(1), (2), (3), (4), (6), (8), (9), (10), and (14).

<sup>4</sup> The term "control strategy" is defined in 40 CFR 51.100(n) as a combination of measures designated to achieve the aggregate emission reductions necessary for attainment and maintenance of national ambient air quality standards.

<sup>5</sup> 40 CFR 51.160 requires each SIP to contain legally enforceable measures that enable the State to determine whether the construction or modification of a facility, building, structure, or installation, or combination thereof will result in:

(1) A violation of applicable portions of the control strategy; or (2) interference with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring State.

TABLE 5.—PROVISIONS OF 30 TAC THAT WE ARE APPROVING INTO TEXAS' SIP—Continued

New SIP citation	Former SIP citation	Dated adopted by State	Title	Explanation
Section 116.11 .....	Section 116.14(a)(1)(6) .....	06/17/98	Compliance History Definitions.	
<b>Subchapter B—New Source Review Permits</b>				
<b>Division 1—Permit Application</b>				
Section 116.110 .....	Sections 116.1(a)–(c), 116.2, and 116.3(b).	06/17/98	Applicability .....	The New SIP Citation does not include Sections 116.110(a)(2), (a)(3), and (c).
Section 116.111 .....	Section 116.3(a) .....	06/17/98	General Application .....	The New SIP Citation does not include Section 116.111(2)(K).
Section 116.112 .....	Sections 116.3(a)(1)(B) and 116.3(a)(13).	06/17/98	Distance Limitations.	
Section 116.114 .....	Sections 116.3(f), 116.5, 116.10(a)(1), and 116.10(e).	06/17/98	Application Review Schedule.	
Section 116.115 .....	Section 116.4 .....	06/17/98	Special Provisions .....	The New SIP Citation does not include Sections 116.115(b), (c)(2)(A)(i), and (c)(2)(B)(ii)(I).
Section 116.116 .....	Section 116.5 .....	06/17/98	Changes to Facilities .....	The New SIP Citation does not include Sections 116.116(b)(3), (e), and (f).
<b>Division 2—Compliance History</b>				
Section 116.120 .....	Section 116.14(b) .....	06/17/98	Applicability.	
Section 116.121 .....	Section 116.14(c) .....	06/17/98	Exemptions.	
Section 116.122 .....	Section 116.14(d) .....	06/17/98	Contents of Compliance History.	
Section 116.123 .....	Section 116.14(e) .....	06/17/98	Effective Dates.	
Section 116.124 .....	Section 116.14(f) .....	06/17/98	Public Notice of Compliance History.	
Section 116.125 .....	Section 116.14(g) .....	06/17/98	Preservation of Existing Rights and Procedures.	
Section 116.126 .....	Section 116.14(h) .....	06/17/98	Avoidance of Permit Applications.	
<b>Division 3—Public Notice</b>				
Section 116.130 .....	Section 116.10(a)(7) .....	06/17/98	Applicability .....	The New SIP Citation does not include Section 116.130(c).
Section 116.131 .....	Section 116.10(a)(1) and (2) ..	06/17/98	Public Notification.	
Section 116.132 .....	Section 116.10(a)(3) and (4) ..	06/17/98	Public Notice Format .....	The New SIP Citation does not include Sections 116.132(c) and (d).
Section 116.133 .....	Did not exist .....	06/17/98	Sign Posting Requirements ....	The New SIP Citation does not include Sections 116.134(f) and (g).
Section 116.134 .....	Section 116.10(a)(5) .....	06/17/98	Notification of Affected Agencies.	
Section 116.136 .....	Section 116.10(b) .....	08/16/93	Public Comment Procedures.	
Section 116.137 .....	Section 116.10(c) .....	06/16/93	Notification of Final Action by the Commission.	
<b>Division 4—Permit Fees</b>				
Section 116.140 .....	Section 116.11(a) and (e) .....	06/17/98	Applicability.	
Section 116.141 .....	Section 116.11(b) .....	06/17/98	Determination of Fees .....	Sections 116.141(a), (c)–(e) previously approved. Today's action approves Section 116.143(b) and changes to Section 116.141 of the 1998 submittal.
Section 116.143 .....	Section 116.11(c)–(f) .....	06/17/98	Payment of Fees.	

TABLE 5.—PROVISIONS OF 30 TAC THAT WE ARE APPROVING INTO TEXAS' SIP—Continued

New SIP citation	Former SIP citation	Dated adopted by State	Title	Explanation
Division 5—Nonattainment Review				
Section 116.150 .....	Section 116.150 .....	02/24/99	New Major Source or Major Modification in Ozone Non-attainment Area.	Previously approved. No changes in 1998 submittal. Today's action approves incorporation into Division 5.
Section 116.151 .....	Section 116.151 .....	03/18/98	New Major Source or Major Modification in Nonattainment Area Other than Ozone.	
Division 6—Prevention of Significant Deterioration Review				
Section 116.160 .....	Section 116.160 .....	06/17/98	Prevention of Significant Deterioration Requirements.	Previously approved. Today's action approves changes in Sections 116.160 and 116.161 of the 1998 submittal.
Section 116.161 .....	Section 116.161 .....	06/17/98	Sources Located in an Attainment Area with a Greater than <i>de Minimis</i> Impact.	
Section 116.162 .....	Section 116.162 .....	08/16/93	Evaluation of Air Quality Impacts.	Previously approved. No changes in 1998 submittal. Today's action approves incorporation into Division 6.
Section 116.163 .....	Section 116.163 .....	08/16/93	Prevention of Significant Deterioration Permits Fees.	
Division 7—Emission Reduction: Offsets				
Section 116.170 .....	Section 116.170 .....	06/17/98	Applicability of Reduction Credits.	Previously approved. Today's action approves changes in 1998 submitted. The New SIP Citation does not include Section 116.170(2).

**X. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from

Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 November 23, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality

of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 12, 2001.

**Gregg A. Cooke,**

*Regional Administrator, Region 6.*

Part 52, chapter I, title 40 of the Code of Federal Regulations 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. In § 52.2270 the table in paragraph (c) is amended as follows:

a. Under Chapter 101, revising the entry for Section 101.1;

b. Under Chapter 116, deleting all existing entries and replacing with new entries as shown below:

#### § 52.2270 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

#### EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State submittal/approval date	EPA approval date	Explanation
Chapter 101—General Rules				
Section 101.1 .....	Definitions .....	06/29/2000	9/24/01 .....	Ref 52.2299(c)(102). Notes: 1. On 7/17/2000 EPA approved removal of Nonattainment review definitions from 101.1 and addition to Chapter 116, Section 116.12; 2. On 11/28/2000 EPA approved definitions of “Reportable Quantity” and “Reportable Upset;” 3. Last action EPA approved revised definition of “nonattainment area” and reinstatement of definition of “ <i>de minimis</i> impact.”
* * * * *				
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification				
Section 116.6 .....	Exemptions .....	03/27/75	08/13/82, 47 FR 35194.	
Subchapter A—Definitions				
Section 116.10 .....	General Definitions .....	06/17/98	9/24/01 .....	The SIP does not include Sections 116.10(1), (2), (3), (4), (6), (8), (9), (10), and (14).
Section 116.11 .....	Compliance History Definitions.	06/17/98	9/24/01.	
Section 116.12 .....	Nonattainment Review Definitions.	02/24/99	07/17/00, 65 FR 43994.	
Subchapter B—New Source Review Permits				
Division 1: Permit Application				
Section 116.110 .....	Applicability .....	06/17/98	9/24/01 .....	The SIP 116.110 does not include Sections 116.110(a)(2), (a)(3), and (c). The SIP does not include Section 116.111(2)(K).
Section 116.111 .....	General Application .....	06/17/98	9/24/01 .....	
Section 116.112 .....	Distance Limitations .....	06/17/98	9/24/01.	
Section 116.114 .....	Application Review Schedule.	06/17/98	9/24/01.	

## EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State submittal/ap- proval date	EPA approval date	Explanation
Schedule 116.115 .....	Special Provisions .....	06/17/98	9/24/01 .....	The SIP does not include Sections 116.115(b), (c)(2)(A)(i), and (c)(2)(B)(ii)(I). The SIP does not include Sections 116.115(b)(3), number] (e), and (f).
Section 116.116 .....	Amendments and Alter- ations.	06/17/98	9/24/01 .....	
Division 2: Compliance History				
Section 116.120 .....	Applicability .....	06/17/98	9/24/01.	
Section 116.121 .....	Exemptions .....	06/17/98	9/24/01.	
Section 116.122 .....	Contents of Compliance History.	06/17/98	9/24/01.	
Section 116.123 .....	Effective Dates .....	06/17/98	9/24/01.	
Section 116.124 .....	Public Notice of Compli- ance History.	06/17/98	9/24/01.	
Section 116.125 .....	Preservation of Existing Rights and Procedures.	06/17/98	9/24/01.	
Section 116.126 .....	Voidance of Permit Appli- cations.	06/17/98	9/24/01.	
Division 3: Public Notice				
Section 116.130 .....	Applicability .....	06/17/98	9/24/01 .....	The SIP does not include Section 116.130(c).
Section 116.131 .....	Public Notification Require- ments.	06/17/98	9/24/01.	
Section 116.132 .....	Public Notice Format .....	06/17/98	9/24/01 .....	The SIP does not include Sections 116.132(c) and (d). The SIP does not include Sections 116.133(f) and (g).
Section 116.133 .....	Sign Posting Requirements	06/17/98	9/24/01 .....	
Section 116.134 .....	Notification of Affected Agencies.	06/17/98	9/24/01.	
Section 116.136 .....	Public Comment Proce- dures.	08/16/93	9/24/01.	
Section 116.137 .....	Notification of Final Action by the Commission.	08/16/93	9/24/01.	
Division 4: Permit Fees				
Section 116.140 .....	Applicability .....	06/17/98	9/24/01.	
Section 116.141 .....	Determination of Fees .....	06/17/98	9/24/01.	
Section 116.143 .....	Payment of Fees .....	06/17/98	9/24/01.	
Division 5: Nonattainment Review				
Section 116.150 .....	New Major Source or Major Modification in Ozone Nonattainment Area.	02/24/99	07/17/00, 65 FR 43986.	
Section 116.151 .....	New Major Source or Major Modification in Nonattainment Area Other than Ozone.	03/18/98	07/17/00, 65 FR 43986.	
Division 6: Prevention of Significant Deterioration Review				
Section 116.160 .....	Prevention of Significant Deterioration Review Re- quirements.	06/17/98	9/24/01.	
Section 116.161 .....	Source Located in an At- tainment Area with Greater than De Minimis Impact.	06/17/98	9/24/01.	
Section 116.162 .....	Evaluation of Air Quality Impacts.	08/16/93	08/19/97, 62 FR 44083.	
Section 116.163 .....	Prevention of Significant Deterioration Permit Fees.	08/16/93	08/19/97, 62 FR 44083.	

## EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State submittal/approval date	EPA approval date	Explanation
<b>Division 7: Emission Reductions: Offsets</b>				
Section 116.170 .....	Applicability of Reduction Credits.	06/17/98	9/24/01 .....	The SIP does not include Section 116.170(2).
*	* *	*	*	* *

[FR Doc. 01–23624 Filed 9–21–01; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[PA–4127a; FRL–7060–3]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO<sub>x</sub> RACT Determinations for Eight Individual Sources Located in the Pittsburgh-Beaver Valley Area; Withdrawal of Direct Final Rule**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

**SUMMARY:** Due to receipt of a letter of adverse comment, EPA is withdrawing the direct final rule to approve revisions which establish reasonably available control technology (RACT) requirements for eight major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) located in the Pittsburgh-Beaver Valley ozone nonattainment area. In the direct final rule published on August 13, 2001 (66 FR 42418), EPA stated that if it received adverse comment by September 12, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments from the Citizens for Pennsylvania's Future (PennFuture). EPA will address the comments received in a subsequent final action based upon the proposed action also published on August 13, 2001 (66 FR 42487). EPA will not institute a second comment period on this action.

**DATES:** The Direct final rule is withdrawn as of September 24, 2001.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford at (215) 814–2108.

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 14, 2001.

James W. Newson,

Acting Regional Administrator, Region III.

Accordingly, the addition of § 52.2020(c)(164) is withdrawn as of September 24, 2001.

[FR Doc. 01–23759 Filed 9–21–01; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[PA–4137a; FRL–7060–4]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC RACT Determinations for Two Individual Sources Located in the Pittsburgh-Beaver Valley Area; Withdrawal of Direct Final Rule**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

**SUMMARY:** Due to an adverse comment, EPA is withdrawing the direct final rule to approve revisions which establish reasonably available control technology (RACT) requirements for two major sources of volatile organic compounds (VOC) located in the Pittsburgh-Beaver Valley ozone nonattainment area. In the direct final rule published on August 13, 2001 (66 FR 42415), EPA stated that if it received adverse comment by September 12, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments from the Citizens for Pennsylvania's Future (PennFuture). EPA will address the comments received in a subsequent final action based upon the proposed action also published on August 13, 2001 (66 FR 42487). EPA will not institute a second comment period on this action.

**DATES:** The Direct final rule is withdrawn as of September 24, 2001.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford at (215) 814–2108.

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: September 14, 2001.

James W. Newson,

Acting Regional Administrator, Region III.

Accordingly, the addition of § 52.2020(c)(171) is withdrawn as of September 24, 2001.

[FR Doc. 01–23760 Filed 9–21–01; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 70**

[AD–FRL–7064–1]

**Clean Air Act Final Approval of Operating Permits Program; State of New Hampshire**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** The EPA is taking final action to fully approve the Clean Air Act Operating Permits Program of the State of New Hampshire for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources of air pollution, and to certain other sources. EPA granted interim approval to New Hampshire's operating permit program on October 2, 1996.

**DATES:** This direct final rule is effective on November 23, 2001 without further notice, unless EPA receives relevant adverse comment by October 24, 2001. If EPA receives relevant adverse comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to Steven Rapp, Unit Manager, Air Permit Program Unit, Office of Ecosystem Protection (mail code CAP) U.S.