AGENDA ITEM REQUEST
for State Implementation Plan Revision Adoption

AGENDA REQUESTED: August 8, 2018
DATE OF REQUEST: July 20, 2018
INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Joyce Spencer-Nelson, (512) 239-5017

CAPTION: Docket No. 2017-1719-SIP. Consideration of the adoption of the Federal Clean Air Act (FCAA), Section 110(a)(1) and 110(a)(2) Infrastructure State Implementation Plan (SIP) Revision for the 2015 ozone National Ambient Air Quality Standards (NAAQS).

The SIP revision outlines the requirements of FCAA, Section 110(a)(2)(A) through (C) and (E) through (M), and the Texas provisions supporting the requirements for the 2015 ozone NAAQS. These requirements include basic program elements such as: enforceable emission limitations and control measures; air quality monitoring and modeling; a permitting program; adequate funding and personnel; authority under state law to carry out the plan; emissions reporting; emergency powers; public participation; and fee collection. The transport requirements of FCAA, Section110(a)(2)(D) are addressed in a separate SIP revision (Non-Rule Project No. 2017-039-SIP-NR). (Kristin Patton, Amy Browning) (Non-Rule Project No. 2017-040-SIP-NR)

Steve Hagle, P.E. David Brymer
Deputy Director Division Director
Joyce Nelson
Agenda Coordinator

Copy to CCC Secretary? NO  X  YES
Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners  
Date: July 20, 2018

Thru: Bridget C. Bohac, Chief Clerk  
Stephanie Bergeron Perdue, Interim Executive Director

From: Steve Hagle, P.E., Deputy Director  
Office of Air

Docket No.: 2017-1719-SIP

Subject: Commission Approval for Adoption of Federal Clean Air Act (FCAA), §110(a)(1) and §110(a)(2) Infrastructure State Implementation Plan (SIP) Revision for the 2015 Ozone National Ambient Air Quality Standards (NAAQS)  
2015 Ozone NAAQS Infrastructure SIP Revision  
Project No. 2017-040-SIP-NR

Background and reason(s) for the SIP revision:
On October 1, 2015, the United States Environmental Protection Agency (EPA) revised the primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone to an eight-hour standard of 0.070 parts per million. Within three years of the promulgation of any new or revised NAAQS, FCAA, §110(a)(1) requires states to submit a SIP revision to provide for the implementation, maintenance, and enforcement of the NAAQS. Section 110(a)(2)(A) through (M), lists the elements that the SIP submissions must contain. This SIP revision specifically addresses infrastructure requirements under FCAA, §110(a)(2)(A) through (C) and (E) through (M). The transport requirements of FCAA, §110(a)(2)(D) are addressed in a separate SIP revision (Project No. 2017-039-SIP-NR). Infrastructure and transport SIP revisions to address the 2015 Ozone NAAQS are due to the EPA by October 1, 2018.

Scope of the SIP revision:

A.) Summary of what the SIP revision will do:
The SIP revision documents the infrastructure requirements of FCAA, §110(a)(1) and §110(a)(2)(A) through (C) and (E) through (M) and the Texas statutes and rules that allow the commission to meet those requirements. The SIP revision documents that the Texas SIP at 40 Code of Federal Regulations Part 52, Subpart SS contains all the infrastructure elements required by FCAA, §110(a)(2) for the implementation, maintenance, and enforcement of the 2015 ozone NAAQS. Because the infrastructure demonstration explains how the existing Texas statutes and rules allow the state to meet its obligations under the FCAA, the SIP revision has been developed as an expansion of the existing Section V: Legal Authority of Texas’ SIP. This expanded section is unique to infrastructure SIP revisions that are submitted to meet the requirements of FCAA, §110(a)(1), and demonstrates that the state can provide for the implementation, maintenance, and enforcement of the NAAQS.
B.) Scope required by federal regulations or state statutes:
Guidance on development and submission of infrastructure SIPs was issued by the EPA on September 13, 2013.\(^1\) Pursuant to FCAA, §110(a)(2), requirements for the infrastructure demonstration contained in the SIP revision include basic program elements such as: enforceable emission limitations and control measures; air quality monitoring and modeling; a permitting program; adequate funding and personnel; authority under state law to carry out the plan; emissions reporting; emergency powers; public participation; and fee collection.

C.) Additional staff recommendations that are not required by federal rule or state statute:
None

Statutory authority:
The EPA signed the final rule establishing the revised NAAQS for ozone on October 1, 2015, and published the notice of the final rule in the Federal Register on October 26, 2015 (80 FR 65292). The authority to propose and adopt the SIP revision is derived from FCAA, §110, which requires states to submit SIP revisions that contain enforceable measures to achieve the NAAQS, and other general and specific authority in Texas Water Code, Chapters 5 and 7, and Texas Health and Safety Code, Chapter 382. States are required to submit infrastructure SIP revisions within three years of promulgation of a new NAAQS.

Effect on the:

A.) Regulated community:
No effects on the regulated community are anticipated. However, if the EPA were to issue a federal implementation plan (FIP) because the state failed to submit a SIP revision there could ultimately be significant effects on the regulated community.

B.) Public:
None

C.) Agency programs:
The SIP revision would have no new effect on agency programs.

Stakeholder meetings:
The proposed SIP revision went through a public review and comment period including one public hearing.

\(^1\) Memorandum from Stephen D. Page, Director of the Office of Air Quality Planning and Standards, September 13, 2013, *Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)*. The EPA Office of Air Quality Planning and Standards.
Re: Docket No. 2017-1719-SIP

Public comment:
The commission offered a public hearing on the proposed SIP revision in Austin on April 10, 2018. Notice of the public hearing was published in the Texas Register and the Austin American-Statesman, Dallas Morning News, and Houston Chronicle newspapers.

The public comment period opened on March 9, 2018 and closed on April 10, 2018. No comments were received regarding this SIP revision.

Significant changes from proposal:
None

Potential controversial concerns and legislative interest:
None

Does this SIP revision affect any current policies or require development of new policies?
No

What are the consequences if this SIP revision does not go forward? Are there alternatives to this SIP revision?
Infrastructure SIP revisions are required by §110(a) of the FCAA to be submitted within three years of the EPA promulgating the revised standard. The commission could choose to not comply with requirements to develop and submit infrastructure and transport SIP revisions to the EPA. However, if the required infrastructure SIP revision is not submitted to the EPA by the October 1, 2018 deadline, the EPA has the authority to issue a finding of failure to submit requiring that the TCEQ submit the required SIP revisions within a specified time period and potentially imposing sanctions on the state. The EPA would be required to promulgate a FIP if the TCEQ failed to make the submission within two years, or by October 1, 2020.

Key points in the SIP revision adoption schedule:
Anticipated adoption date: September 5, 2018
EPA due date: October 1, 2018

Agency contacts:
Kristin Patton, SIP Project Manager, Air Quality Division, (512) 239-4907
Amy Browning, Staff Attorney, (512) 239-0891
Joyce Spencer-Nelson, Texas Register Rule/Agenda Coordinator, (512) 239-5017

cc: Chief Clerk, 2 copies
Executive Director’s Office
Jim Rizk
Office of General Counsel
Kristin Patton
Joyce Spencer-Nelson
REVISIONS TO THE STATE OF TEXAS AIR QUALITY IMPLEMENTATION PLAN CONCERNING FEDERAL CLEAN AIR ACT SECTIONS 110(a)(1) AND (2) INFRASTRUCTURE

INFRASTRUCTURE DEMONSTRATION FOR OZONE

TCEQ

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. BOX 13087
AUSTIN, TEXAS 78711-3087

FEDERAL CLEAN AIR ACT, SECTIONS 110(A)(1) AND (2) INFRASTRUCTURE STATE IMPLEMENTATION PLAN REVISION FOR THE 2015 OZONE NATIONAL AMBIENT AIR QUALITY STANDARD

PROJECT NUMBER 2017-040-SIP-NR

Adoption
August 8, 2018
EXECUTIVE SUMMARY

On October 1, 2015, the United States Environmental Protection Agency (EPA) revised the primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone to an eight-hour standard of 0.070 parts per million (80 Federal Register 65291). Within three years of the promulgation of any new or revised NAAQS, Federal Clean Air Act (FCAA), §110(a)(1) requires states to submit a state implementation plan (SIP) revision to provide for the implementation, maintenance, and enforcement of the NAAQS. Section 110(a)(2)(A) through (M), lists the elements that the SIP submissions must contain. This SIP revision specifically addresses infrastructure requirements under FCAA, §110(a)(2)(A) through (C) and (E) through (M). The transport requirements of FCAA, §110(a)(2)(D) are addressed in a separate SIP revision (Project No. 2017-039-SIP-NR). Infrastructure and transport SIP revisions to address the 2015 Ozone NAAQS are due to the EPA by October 1, 2018.

This SIP revision documents that the Texas SIP at 40 Code of Federal Regulations Part 52, Subpart SS contains all the infrastructure elements required by FCAA, §110(a)(2) for the implementation, maintenance, and enforcement of the 2015 ozone NAAQS. Because the infrastructure demonstration explains how the existing Texas statutes and rules allow the state to meet its obligations under the FCAA, this SIP revision has been developed as an expansion of the existing Section V: Legal Authority of Texas’ SIP. This expanded section is unique to infrastructure SIP revisions that are submitted to meet the requirements of FCAA, §110(a)(1), and demonstrates that the state can provide for the implementation, maintenance, and enforcement of the NAAQS.

This infrastructure demonstration outlines the requirements of FCAA, §110(a)(2)(A) through (C) and (E) through (M) and the Texas statutes and rules that allow the Texas Commission on Environmental Quality to meet those requirements. These requirements include basic program elements such as: enforceable emission limitations and control measures; air quality monitoring and modeling; a permitting program; adequate funding and personnel; authority under state law to carry out the plan; emissions reporting; emergency powers; public participation; and fee collection.
SECTION V: LEGAL AUTHORITY

A. General (Revised)

B. Infrastructure Demonstration for Lead (No change)
   1. 2008 Lead National Ambient Air Quality Standard (No change)

C. Infrastructure Demonstration for Nitrogen Dioxide (No change)
   1. 2010 Nitrogen Dioxide National Ambient Air Quality Standard (No change)

D. Infrastructure Demonstration for Ozone (Revised)
   1. 2015 Ozone National Ambient Air Quality Standard (New)
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<tr>
<th>Acronym</th>
<th>Definition</th>
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<tbody>
<tr>
<td>BART</td>
<td>best available retrofit technology</td>
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<tr>
<td>CAIR</td>
<td>Clean Air Interstate Rule</td>
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<td>CSAPR</td>
<td>Cross-State Air Pollution Rule</td>
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<tr>
<td>D.C.</td>
<td>District of Columbia</td>
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<tr>
<td>EGU</td>
<td>electric generating unit</td>
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<tr>
<td>EPA</td>
<td>United States Environmental Protection Agency</td>
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<td>FCAA</td>
<td>Federal Clean Air Act</td>
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<td>FIP</td>
<td>federal implementation plan</td>
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<tr>
<td>FR</td>
<td><em>Federal Register</em></td>
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<tr>
<td>GHG</td>
<td>greenhouse gas</td>
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<tr>
<td>NAAQS</td>
<td>National Ambient Air Quality Standard</td>
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<tr>
<td>NO\textsubscript{x}</td>
<td>nitrogen oxides</td>
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<tr>
<td>NSR</td>
<td>New Source Review</td>
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<tr>
<td>PM</td>
<td>particulate matter</td>
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<tr>
<td>PM\textsubscript{2.5}</td>
<td>particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers</td>
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<tr>
<td>PSD</td>
<td>Prevention of Significant Deterioration</td>
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<td>RH</td>
<td>Regional Haze</td>
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<tr>
<td>SIP</td>
<td>state implementation plan</td>
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<tr>
<td>SO\textsubscript{2}</td>
<td>sulfur dioxide</td>
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<tr>
<td>TAC</td>
<td>Texas Administrative Code</td>
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<td>Texas Air Control Board</td>
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<td>Texas Clean Air Act</td>
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<td>Texas Commission on Environmental Quality (commission)</td>
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<td>Texas Health and Safety Code</td>
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<td>Texas Natural Resource Conservation Commission</td>
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<td>TWC</td>
<td>Texas Water Code</td>
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SECTION V-A: LEGAL AUTHORITY

General
The Texas Commission on Environmental Quality (TCEQ) has the legal authority to implement, maintain, and enforce the National Ambient Air Quality Standards (NAAQS) and to control the quality of the state’s air, including maintaining adequate visibility.


Originally, the TCAA stated that the Texas Air Control Board (TACB) is the state air pollution control agency and is the principal authority in the state on matters relating to the quality of air resources. The 72nd Texas Legislature, 1991, First Called Session, abolished the TACB effective September 1, 1993, and its powers, duties, responsibilities, and functions were transferred to the Texas Natural Resource Conservation Commission (TNRCC). With the creation of the TNRCC, the authority over air quality is found in both the Texas Water Code and the TCAA. Specifically, the authority of the TNRCC is found in Chapters 5 and 7. Chapter 5, Subchapters A through F, H through J, and L, include the general provisions, organization, and general powers and duties of the TNRCC, and the responsibilities and authority of the executive director. Chapter 5 also authorizes the TNRCC to implement action when emergency conditions arise and to conduct hearings. Chapter 7 gives the TNRCC enforcement authority. The 77th Texas Legislature, 2001, continued the existence of the TNRCC until September 1, 2013, and changed the name of the TNRCC to the TCEQ. The 81st Texas Legislature, 2009, First Called Session, amended section 5.014 of the Texas Water Code, changing the expiration date of the TCEQ to September 1, 2011, unless continued in existence by the Texas Sunset Act. The 82nd Texas Legislature, 2011, Regular Session, continued the existence of the TCEQ until 2023.

The TCAA specifically authorizes the TCEQ to establish the level of quality to be maintained in the state's air and to control the quality of the state's air by preparing and developing a general, comprehensive plan. The TCAA, Subchapters A through D, also authorize the TCEQ to collect information to enable the commission to develop an inventory of emissions; to conduct research and investigations; to enter property and examine records; to prescribe monitoring requirements; to institute enforcement proceedings; to enter into contracts and execute instruments; to formulate rules; to issue orders taking into consideration factors bearing upon health, welfare, social and economic factors, and practicability and reasonableness; to conduct hearings; to establish air quality control regions; to encourage cooperation with citizens’ groups and other agencies and political subdivisions of the state as well as with industries and the federal government; and to establish and operate a system of permits for construction or modification of facilities.
Local government authority is found in Subchapter E of the TCAA. Local governments have the same power as the TCEQ to enter property and make inspections. They also may make recommendations to the commission concerning any action of the TCEQ that affects their territorial jurisdiction, may bring enforcement actions, and may execute cooperative agreements with the TCEQ or other local governments. In addition, a city or town may enact and enforce ordinances for the control and abatement of air pollution not inconsistent with the provisions of the TCAA and the rules or orders of the commission.

Subchapters G and H of the TCAA authorize the TCEQ to establish vehicle inspection and maintenance programs in certain areas of the state, consistent with the requirements of the Federal Clean Air Act; coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and measures necessary to attain and maintain the NAAQS; establish gasoline volatility and low emission diesel standards; and fund and authorize participating counties to implement vehicle repair assistance, retrofit, and accelerated vehicle retirement programs.

Applicable Law
The following statutes and rules provide necessary authority to adopt and implement the state implementation plan (SIP). The rules listed below have previously been submitted as part of the SIP.

Statutes
All sections of each subchapter are included, unless otherwise noted.

TEXAS HEALTH & SAFETY CODE, Chapter 382 September 1, 2017
TEXAS WATER CODE September 1, 2017

Chapter 5: Texas Natural Resource Conservation Commission
Subchapter A: General Provisions
Subchapter B: Organization of the Texas Natural Resource Conservation Commission
Subchapter C: Texas Natural Resource Conservation Commission
Subchapter D: General Powers and Duties of the Commission
Subchapter E: Administrative Provisions for Commission
Subchapter F: Executive Director (except §§5.225, 5.226, 5.227, 5.2275, 5.231, 5.232, and 5.236)
Subchapter H: Delegation of Hearings
Subchapter I: Judicial Review
Subchapter J: Consolidated Permit Processing
Subchapter L: Emergency and Temporary Orders (§§5.514, 5.5145, and 5.515 only)
Subchapter M: Environmental Permitting Procedures (§5.558 only)

Chapter 7: Enforcement
Subchapter A: General Provisions (§§7.001, 7.002, 7.0025, 7.004, and 7.005 only)
Subchapter B: Corrective Action and Injunctive Relief (§7.032 only)
Subchapter C: Administrative Penalties
Subchapter D: Civil Penalties (except §7.109)
Subchapter E: Criminal Offenses and Penalties: §§7.177, 7.179-7.183
Rules

The following rules are found in 30 Texas Administrative Code, as of the following latest effective dates:

Chapter 7: Memoranda of Understanding, §§7.110 and 7.119
December 13, 1996 and May 2, 2002

Chapter 19: Electronic Reporting
March 15, 2007

Chapter 35: Subchapters A-C, K: Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions
July 20, 2006

Chapter 39: Public Notice, §§39.201; 39.401; 39.403(a) and (b)(8)-(10); 39.405(f)(1) and (g); 39.409; 39.411 (a), (b)(1)-(6), and (8)-(10) and (c)(1)-(6) and (d); 39.413(9), (11), (12), and (14); 39.418(a) and (b)(3) and (4); 39.419(a), (b), (d), and (e); 39.420(a), (b) and (c)(3) and (4); 39.423(a) and (b); 39.601-39.605
December 29, 2016

Chapter 55: Requests for Reconsideration and Contested Case Hearings; Public Comment, §§55.1; 55.21(a) - (d), (e)(2), (3), and (12), (f) and (g); 55.101(a), (b), and (c)(6) - (8); 55.103; 55.150; 55.152(a)(1), (2), and (6) and (b); 55.154; 55.156; 55.200; 55.201(a) - (h); 55.203; 55.205; 55.209, and 55.211
December 29, 2016

Chapter 101: General Air Quality Rules
October 12, 2017

Chapter 106: Permits by Rule, Subchapter A
April 17, 2014

Chapter 111: Control of Air Pollution from Visible Emissions and Particulate Matter
August 3, 2017

Chapter 112: Control of Air Pollution from Sulfur Compounds
July 16, 1997

Chapter 113: Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants
May 14, 2009

Chapter 114: Control of Air Pollution from Motor Vehicles
December 29, 2016

Chapter 115: Control of Air Pollution from Volatile Organic Compounds
January 5, 2017

Chapter 116: Permits for New Construction or Modification
November 24, 2016

Chapter 117: Control of Air Pollution from Nitrogen Compounds
June 25, 2015

Chapter 118: Control of Air Pollution Episodes
March 5, 2000

Chapter 122: §122.122: Potential to Emit
February 23, 2017
Chapter 122: §122.215: Minor Permit Revisions  
June 3, 2001

Chapter 122: §122.216: Applications for Minor Permit Revisions  
June 3, 2001

Chapter 122: §122.217: Procedures for Minor Permit Revisions  
December 11, 2002

Chapter 122: §122.218: Minor Permit Revision Procedures for Permit 
Revisions Involving the Use of Economic Incentives, Marketable 
Permits, and Emissions Trading  
June 3, 2001
SECTION V-D-1: INFRASTRUCTURE DEMONSTRATION FOR THE 2015 OZONE NATIONAL AMBIENT AIR QUALITY STANDARD

CHAPTER 1: GENERAL

1.1 BACKGROUND
Information on the Texas state implementation plan (SIP) and a list of SIP revisions and other air quality plans adopted by the commission can be found on the Texas State Implementation Plan webpage (http://www.tceq.texas.gov/airquality/sip) on the Texas Commission on Environmental Quality’s (TCEQ) website (http://www.tceq.texas.gov/).

1.2 INTRODUCTION
On October 1, 2015, the EPA revised the primary and secondary National Ambient Air Quality Standard (NAAQS) for ozone to an eight-hour standard of 0.070 parts per million (ppm) or 70 parts per billion (ppb) (80 Federal Register (FR) 65291). Within three years of the promulgation of any new or revised NAAQS, the Federal Clean Air Act (FCAA), §110(a)(1) requires states to submit a SIP revision to provide for the implementation, maintenance, and enforcement of the NAAQS. Section 110(a)(2)(A) through (M), lists the elements that the SIP submissions must contain. This SIP revision specifically addresses infrastructure requirements under FCAA, §110(a)(2)(A) through (C) and (E) through (M). The transport requirements of FCAA, §110(a)(2)(D) are addressed in a separate SIP revision (Project No. 2017-039-SIP-NR). Submittal of this SIP revision and the transport SIP revision covering FCAA, §110(a)(2)(D) will fulfill the FCAA 110(a)(1) requirement. Infrastructure and transport SIP revisions to address the 2015 ozone NAAQS are due to the EPA by October 1, 2018.

This chapter outlines FCAA, §110(a)(2)(A) through (C) and (E) through (M) and includes various provisions that support the conclusion that Texas meets the requirements of each section. These requirements include basic program elements such as: enforceable emission limitations and control measures; air quality monitoring and modeling; a permitting program; adequate funding and personnel; authority under state law to carry out the plan; emissions reporting; emergency powers; public participation; and fee collection.

The federally enforceable SIP for Texas is documented at 40 Code of Federal Regulations Part 52, Subpart SS.

This infrastructure demonstration is an expansion of Section V: Legal Authority of Texas' SIP that provides additional information about how the existing statutes and rules allow Texas to meet the §110(a)(2) infrastructure requirements of the FCAA. Therefore, this SIP revision contains an expanded infrastructure section under the SIP legal authority. The infrastructure demonstration in Section V-D-1: Infrastructure Demonstration for the 2015 Ozone National Ambient Air Quality Standard is intended to satisfy the §110(a)(1) requirement to provide for the implementation, maintenance, and enforcement of the NAAQS. This infrastructure section will be updated as part of the infrastructure SIP revisions that Texas is required to submit as new or revised NAAQS are promulgated, but it will not otherwise be included in other Texas SIP revisions. Section V-A: Legal Authority contains the basic listing of Texas’ legal framework for adopting SIP revisions and will be the default legal authority for Texas
SIP revisions that are not specifically submitted to meet the FCAA, §110(a)(1) infrastructure demonstration requirement.

The TCEQ acknowledges that proposed changes to federal regulations may have future impacts on how the TCEQ meets the requirements of FCAA, §110(a)(2); however, this SIP revision reflects the methods and means by which Texas meets these requirements at the time of this SIP revision. Should future federal rule changes necessitate state rule changes, the TCEQ will act appropriately at that time.

1.3 HEALTH EFFECTS
On October 1, 2015, the EPA revised the primary and secondary eight-hour ozone NAAQS to 0.070 ppm (80 FR 65291). To support the 2015 ozone NAAQS, the EPA provided information that suggested that health effects may potentially occur at levels lower than the 2008 ozone standard of 0.075 ppm (75 ppb). Breathing relatively high levels of ground-level ozone can cause acute respiratory problems like cough and decreases in lung function and can aggravate the symptoms of asthma. Repeated exposures to high levels of ozone can potentially make people more susceptible to allergic responses and lung inflammation.

Children are at a relatively higher risk from exposure to ozone when compared to adults since they breathe more air per pound of body weight than adults and because children’s respiratory systems are still developing. Children also spend a considerable amount of time outdoors during summer and during the start of the school year (August through October) when high ozone levels are typically recorded. Adults most at risk from exposures to elevated ozone levels are people working or exercising outdoors and individuals with preexisting respiratory diseases.

1.4 PUBLIC HEARING AND COMMENT INFORMATION
The commission held a public hearing for this SIP revision on April 10, 2018 at 2:00 p.m. in Austin at the TCEQ Headquarters. Notice of the public hearing was published in the Texas Register as well as the Austin American-Statesman, Dallas Morning News, and Houston Chronicle newspapers. The hearing was opened; however, no comments were received at the hearing regarding this SIP revision.

The public comment period opened on March 9, 2018 and closed on April 10, 2018. Written comments were accepted via mail, fax, or through the eComments (http://www1.tceq.texas.gov/rules/ecomments/index.cfm) system; however, no comments were submitted.

An electronic version of the 2015 Ozone NAAQS Infrastructure SIP Revision can be found on the TCEQ’s Air Pollution from Ozone webpage (https://www.tceq.texas.gov/airquality/sip/criteria-pollutants/sip-ozone).

1.5 SOCIAL AND ECONOMIC CONSIDERATIONS
Because rulemaking is not a part of this SIP revision, there are no changes that would impact society or the economy.
1.6 FISCAL AND MANPOWER RESOURCES
The TCEQ has determined that its fiscal and personnel resources are adequate and will not be adversely affected through the implementation of this plan.

1.7 COORDINATION WITH LOCAL AGENCIES
The TCEQ has determined that there will be no assignment to local agencies. However, pre-existing assignments to local agencies regarding various enforcement activities remain in effect and could be used if enforcement activities are delegated to the TCEQ from the EPA.

1.8 ORGANIZATIONS RESPONSIBLE FOR DEVELOPMENT, IMPLEMENTATION, AND ENFORCEMENT
The TCEQ is the agency delegated authority by the Texas Legislature regarding the protection of air quality in the State of Texas. Other local government entities have limited authority regarding air quality matters in the State of Texas.

1.9 DATA AVAILABILITY
The TCEQ affirms that it will retain all data used in the preparation of this SIP revision. All supporting documents and data are publicly available via the TCEQ State Implementation Plan webpage (http://www.tceq.texas.gov/airquality/sip/) or are available from the TCEQ upon request.
CHAPTER 2: TEXAS STATUTORY AUTHORITY

The Texas Commission on Environmental Quality (TCEQ) has the legal authority to implement, maintain, and enforce the National Ambient Air Quality Standards (NAAQS). Texas’ legal authority has been submitted to the United States Environmental Protection Agency (EPA) as part of various state implementation plan (SIP) revisions that have been approved by the EPA.

2.1 BACKGROUND


Originally, the TCAA stated that the Texas Air Control Board (TACB) was the state air pollution control agency and was the principal authority in the state on matters relating to the quality of air resources. In 1991, the legislature abolished the TACB effective September 1, 1993, and its powers, duties, responsibilities, and functions were transferred to the Texas Natural Resource Conservation Commission (TNRCC). With the creation of the TNRCC, the authority over air quality is found in both the Texas Water Code (TWC) and the TCAA. Specifically, the authority of the commission is found in TWC Chapters 5 and 7. Chapter 5, Subchapters A through F, H through J, and L, include the general provisions, organization, and general powers and duties of the commission, and the responsibilities and authority of the executive director. Chapter 5 also authorizes the commission to implement action when emergency conditions arise and to conduct hearings. Chapter 7 gives the commission enforcement authority. The 77th Texas Legislature, 2001, continued the existence of the TNRCC until September 1, 2013, and changed the name of the TNRCC to the TCEQ. The 81st Texas Legislature, 2009, First Called Session, amended section 5.014 of the TWC, changing the expiration date of the TCEQ to September 1, 2011, unless continued in existence by the Texas Sunset Act. The 82nd Texas Legislature, 2011, Regular Session, continued the existence of the TCEQ until 2023.

The TCAA specifically authorizes the TCEQ to establish the level of quality to be maintained in the state's air and to control the quality of the state's air by preparing and developing a general, comprehensive plan. The TCAA, Subchapters A through D, also authorize the TCEQ to collect information to enable the commission to develop an inventory of emissions; conduct research and investigations; enter property and examine records; prescribe monitoring requirements; institute enforcement proceedings; enter into contracts and execute instruments; formulate rules; issue orders taking into consideration factors bearing upon health, welfare, social and economic factors, and practicability and reasonableness; conduct hearings; establish air quality control regions; encourage cooperation with citizens’ groups and other agencies and political subdivisions of the state as well as with industries and the federal government; and establish and operate a system of permits for construction or modification of facilities.
Local government authority concerning air quality matters is found in Subchapter E of the TCAA. Local governments have the same power as the TCEQ to enter property and make inspections. Local governments may also make recommendations to the commission concerning any action of the TCEQ that affects their territorial jurisdiction, may bring enforcement actions, and may execute cooperative agreements with the TCEQ or other local governments. In addition, a city or town may enact and enforce ordinances for the control and abatement of air pollution not inconsistent with the provisions of the TCAA or the rules or orders of the commission.

Subchapters G and H of the TCAA authorize the TCEQ to establish vehicle inspection and maintenance programs in certain areas of the state, consistent with the requirements of the FCAA; to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and measures necessary to attain and maintain the NAAQS; and fund and authorize participating counties to implement vehicle repair assistance, retrofit and accelerated vehicle retirement programs.

2.2 STATUTORY AUTHORITY
The following statutory authority allows for the establishment and operation of the TCEQ and the adoption and implementation of all FCAA, §110(a)(2) requirements.

TCAA, THSC, Chapter 382, except Subchapter I.

Texas Water Code:

§ 5.013(a)(11) & (12) GENERAL JURISDICTION OF COMMISSION
§ 5.051. COMMISSION
§ 5.052. MEMBERS OF THE COMMISSION; APPOINTMENT
§ 5.053. ELIGIBILITY FOR MEMBERSHIP
§ 5.054. REMOVAL OF COMMISSION MEMBERS
§ 5.059. CONFLICT OF INTEREST
§ 5.060. LOBBYIST PROHIBITION
§ 5.101. SCOPE OF SUBCHAPTER
§ 5.102. GENERAL POWERS
§ 5.103. RULES
§ 5.104. MEMORANDA OF UNDERSTANDING
§ 5.105. GENERAL POLICY
§ 5.106. BUDGET APPROVAL
§ 5.107. ADVISORY COMMITTEES, WORK GROUPS, AND TASK FORCES
§ 5.115. PERSONS AFFECTED IN COMMISSION HEARINGS; NOTICE OF APPLICATION
§ 5.117. MANDATORY ENFORCEMENT HEARING
§ 5.120. CONSERVATION AND QUALITY OF ENVIRONMENT
§ 5.121. PUBLIC INFORMATION
§ 5.133. ACTIONS IN MEXICO
§ 5.1733. ELECTRONIC POSTING OF INFORMATION
§ 5.223. ADMINISTRATIVE ORGANIZATION OF COMMISSION
§ 5.230. ENFORCEMENT
§ 5.233. GIFTS AND GRANTS
§ 5.234. APPLICATIONS AND OTHER DOCUMENTS
§5.237. OPERATING FUND
§5.501. EMERGENCY AND TEMPORARY ORDER OR PERMIT; TEMPORARY SUSPENSION OR AMENDMENT OF PERMIT CONDITION
§5.502. APPLICATION FOR EMERGENCY OR TEMPORARY ORDER
§5.514. ORDER ISSUED UNDER AIR EMERGENCY
§5.515. EMERGENCY ORDER BECAUSE OF CATASTROPHE
§5.701(a) FEES
§5.702. PAYMENT OF FEES REQUIRED WHEN DUE
§5.703. FEE ADJUSTMENTS
§5.704. NOTICE OF CHANGE IN PAYMENT PROCEDURE
§5.705. NOTICE OF VIOLATION
§7.002. ENFORCEMENT AUTHORITY
§7.032. INJUNCTIVE RELIEF
§7.051. ADMINISTRATIVE PENALTY
§7.052. MAXIMUM PENALTY
§7.053. FACTORS TO BE CONSIDERED IN DETERMINATION OF PENALTY AMOUNT
§7.061. PAYMENT OF PENALTY; PETITION FOR REVIEW
§7.066. REFERRAL TO ATTORNEY GENERAL
§7.067. SUPPLEMENTAL ENVIRONMENTAL PROJECTS
§7.072. RECOVERY OF PENALTY
§7.073. CORRECTIVE ACTION
§7.101. VIOLATION
§7.102. MAXIMUM PENALTY
§7.103. CONTINUING VIOLATIONS
§7.105. CIVIL SUIT
§7.106. RESOLUTION THROUGH ADMINISTRATIVE ORDER
§7.177. VIOLATIONS OF CLEAN AIR ACT
§7.178. FAILURE TO PAY FEES UNDER CLEAN AIR ACT
§7.179. FALSE REPRESENTATIONS UNDER CLEAN AIR ACT
§7.180. FAILURE TO NOTIFY UNDER CLEAN AIR ACT
§7.181. IMPROPER USE OF MONITORING DEVICE
§7.182. RECKLESS EMISSION OF AIR CONTAMINANT AND ENDANGERMENT
§7.183. INTENTIONAL OR KNOWING EMISSION OF AIR CONTAMINANT AND KNOWING ENDANGERMENT
§7.186. SEPARATE OFFENSES
§7.187. PENALTIES
§7.302. GROUNDS FOR REVOCATION OR SUSPENSION OF PERMIT
CHAPTER 3: TEXAS REGULATORY AUTHORITY

3.1 REGULATORY AUTHORITY

The Texas Commission on Environmental Quality (TCEQ) has promulgated rules implementing statutory authority to meet the requirements of both the Federal Clean Air Act (FCAA) and the Texas Clean Air Act (TCAA). These rules were submitted to the United States Environmental Protection Agency (EPA) in various state implementation plan (SIP) revisions and have been approved in the *Federal Register* (FR) or are pending EPA review. Rules that are relevant for each FCAA, §110(a)(2) requirement are noted below.

3.1.1 FCAA, §110(a)(2)(A)

**Federal Requirement**

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act;

**Texas Requirement**

The TCEQ has promulgated rules to implement and enforce the National Ambient Air Quality Standards (NAAQS) and other air quality standards. These rules include programs for banking and trading of emissions, as well as permits and fees. Periodic revisions to the SIP establish timetables and schedules for improving the air quality in nonattainment areas.

The following chapters of Title 30 of the Texas Administrative Code (TAC) contain rules relevant for this federal requirement:

- Chap. 7 Memoranda of Understanding
- Chap. 101 General Air Quality Rules
- Chap. 106 Permits by Rule, Subchapter A, General Requirements
- Chap. 111 Control of Air Pollution from Visible Emissions and Particulate Matter
- Chap. 112 Control of Air Pollution from Sulfur Compounds
- Chap. 113 Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants
- Chap. 114 Control of Air Pollution from Motor Vehicles
- Chap. 115 Control of Air Pollution from Volatile Organic Compounds
- Chap. 116 Control of Air Pollution by Permits for New Construction or Modification
- Chap. 117 Control of Air Pollution from Nitrogen Compounds
- Chap. 118 Control of Air Pollution Episodes

3.1.2 FCAA, §110(a)(2)(B)

**Federal Requirement**

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor,
compile, and analyze data on ambient air quality, and (ii) make such data available to the Administrator;

Texas Requirement
The TCEQ maintains a network of air quality monitors to measure air quality data, which are reported to the EPA on a regular basis. Texas submits annual monitoring plans to the EPA that describe how the state has complied with monitoring requirements and explains any proposed changes.

The following chapters of 30 TAC contain rules relevant for this federal requirement:

Chap. 101 General Air Quality Rules
Chap. 106 Permits by Rule, Subchapter A, General Requirements
Chap. 111 Control of Air Pollution from Visible Emissions and Particulate Matter
Chap. 112 Control of Air Pollution from Sulfur Compounds
Chap. 115 Control of Air Pollution from Volatile Organic Compounds
Chap. 116 Control of Air Pollution by Permits for New Construction or Modification
Chap. 117 Control of Air Pollution from Nitrogen Compounds

3.1.3 FCAA, §110(a)(2)(C)
Federal Requirement

(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;

Texas Requirement
The TCEQ has established rules governing the enforcement of control measures, including attainment plans and permitting programs that regulate construction and modification of stationary sources.

On January 6, 2014, the EPA published approval of Texas' public participation requirements for air quality permits (79 FR 551). On November 10, 2014, the EPA published partial approval of the October 2010 and April 2014 SIP submittals that revise Texas' Prevention of Significant Deterioration (PSD) program to provide for the regulation of greenhouse gas (GHG) emissions and clarify the applicability of best available control technology for all PSD permit applications (79 FR 66626). The EPA also approved revisions to the New Source Review (NSR) permitting program as consistent with federal requirements for PSD permitting of GHG emissions. Although the EPA originally disapproved of the Texas infrastructure SIP for the 1997 eight-hour ozone NAAQS, and for the 1997 and 2006 PM\textsubscript{2.5} NAAQS for not containing provisions

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1 Approval and Promulgation of Implementation Plans; Texas; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions, 79 FR 66626 (November 10, 2014).
2 Approval and Promulgation of Implementation Plans; Texas; Public Participation for Air Quality Permit Applications, 79 FR 551 (January 6, 2014).
for the permitting of GHGs, on September 4, 2015 the EPA published a direct final rule in the Federal Register to correct the Code of Federal Regulations to reflect that Texas now has a SIP-approved GHG permitting program (80 FR 53467). The rule was effective November 3, 2015. Texas has a robust, SIP-approved permitting program and therefore has met the infrastructure requirements of FCAA, §110(a)(2).

On June 12, 2015, in response to a petition for rulemaking from the Sierra Club, the EPA finalized a SIP call related to provisions in SIPs concerning how air agency rules in EPA-approved SIPs treat excess emissions during periods of startup, shutdown, and malfunction of industrial source process or emission control equipment. Although not one of the states named in the Sierra Club’s petition, the EPA’s final rule included Texas. The State of Texas and the TCEQ disagree with the EPA that the TCEQ’s SIP-approved affirmative defense rule for certain excess emissions is substantially inadequate to meet FCAA requirements and are challenging the EPA’s SIP call.

The following chapters of 30 TAC contain rules relevant for this federal requirement:

Chap. 35 Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Subchapters A, B, C, K
Chap. 39 Public Notice
Chap. 55 Requests for Reconsideration and Contested Case Hearings; Public Notice
Chap. 101 General Air Quality Rules
Chap. 106 Permits by Rule, Subchapter A, General Requirements
Chap. 112 Control of Air Pollution from Sulfur Compounds
Chap. 115 Control of Air Pollution from Volatile Organic Compounds
Chap. 116 Control of Air Pollution by Permits for New Construction or Modification
Chap. 117 Control of Air Pollution from Nitrogen Compounds

3.1.4 FCAA, §110(a)(2)(D)

Federal Requirement
(D) contain adequate provisions (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity from emitting any air pollutant in amounts which will (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement);

Texas Requirement
To address the requirements of FCAA, §110(a)(2)(D)(i) and (ii), an interstate transport technical analysis is provided in the 2015 Ozone NAAQS Transport SIP revision, Project No. 2017-039-SIP-NR.
3.1.5 FCAA, §110(a)(2)(E)

Federal Requirement

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the state comply with the requirements respecting State boards under section 128, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

Texas Requirement
The TCEQ has consistently demonstrated in SIP revisions that the state has adequate personnel, funding, and authority under state law to carry out the SIP. The TCEQ has various Memoranda of Understanding and Memoranda of Agreement with other state and local agencies. Local governments have their own responsibilities and privileges regarding the protection of air quality as established by the Texas Legislature.

The TCEQ relies on the complete statutory and regulatory authority as referenced throughout this document. This statutory authority ensures that Texas can meet the requirements of this section, including the requirements of §128 of the FCAA. The TCEQ also regularly submits references demonstrating the commission's legal authority with SIP revisions submitted to the EPA.

3.1.6 FCAA, §110(a)(2)(F)

Federal Requirement

(F) require, as may be prescribed by the Administrator: (i) the installation, maintenance, and replacement of equipment, and implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to is Act, which reports shall be available at reasonable times for public inspection;

Texas Requirement
The TCEQ requires monitoring for air pollutants as part of its NSR permit program. Certain emission sources are required to submit annual emission inventories and periodic reporting of emissions, which provides data that are used in air quality modeling to help Texas prepare SIP revisions. Emissions data are available at reasonable times for public inspection, with some information also available on the TCEQ website (https://www.tceq.texas.gov).
The following chapters of 30 TAC contain rules relevant for this federal requirement:

Chap. 101 General Air Quality Rules
Chap. 106 Permits by Rule, Subchapter A, General Requirements
Chap. 111 Control of Air Pollution from Visible Emissions and Particulate Matter
Chap. 112 Control of Air Pollution from Sulfur Compounds
Chap. 115 Control of Air Pollution from Volatile Organic Compounds
Chap. 116 Control of Air Pollution by Permits for New Construction or Modification
Chap. 117 Control of Air Pollution from Nitrogen Compounds

3.1.7 FCAA, §110(a)(2)(G)

Federal Requirement

(G) provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;

Texas Requirement

The TCEQ may issue emergency orders, or issue or suspend air permits as required by an air pollution emergency. In addition, the TCEQ also maintains air quality information in a form readily available to the public on the TCEQ's Today's Texas Air Quality Forecast webpage (https://www.tceq.texas.gov/airquality/monops/forecast_today.html).

The following chapters of 30 TAC contain rules relevant for this federal requirement:

Chap. 35 Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Subchapters A, B, C, K
Chap. 118 Control of Air Pollution Episodes

3.1.8 FCAA, §110(a)(2)(H)

Federal Requirement

(H) provide for revision of such plan: (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements Established under this Act;

Texas Requirement

The TCEQ regularly revises the Texas SIP in response to revisions in the NAAQS and EPA rules (see 3.1.1 FCAA, §110(a)(2)(A) above).
3.1.9 FCAA, §110(a)(2)(I)

Federal Requirement
(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);

Texas Requirement
SIP revisions that implement the control strategies necessary to bring a nonattainment area into attainment of the NAAQS are not required by the FCAA to be submitted within three years of the promulgation of a new or revised NAAQS. Therefore, §110(a)(1) does not require this element to be demonstrated as part of an infrastructure SIP submittal (see 73 FR 16205, at 16206).

3.1.10 FCAA, §110(a)(2)(J)

Federal Requirement
(J) meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration and visibility protection);

Texas Requirement
The TCEQ has an established public participation process for all SIP revisions and permitting programs. On January 6, 2014, the EPA approved revisions to the SIP that establish the public participation requirements for air quality permits (79 FR 551).3 The TCEQ consults with other state agencies, local agencies, and non-governmental organizations, as well as with the environmental agencies of other states regarding air quality concerns. All major sources in Texas are subject to Texas’ SIP-approved PSD program.

On March 19, 2009, the TCEQ submitted a Regional Haze (RH) SIP revision. This visibility improvement plan relied primarily on the Clean Air Interstate Rule (CAIR) emission reductions that the EPA previously deemed sufficient to satisfy best available retrofit technology (BART) requirements for electric generating units (EGUs). On December 16, 2014, the EPA published a proposed rule to partially disapprove the 2009 Texas RH SIP revision and issue a federal implementation plan (FIP) (79 FR 74818). The EPA also proposed to approve the Texas BART rule for non-EGUs, and replace the TCEQ’s reliance on CAIR with a FIP implementing the Cross-State Air Pollution Rule (CSAPR) in Texas for EGU BART.4 On January 5, 2016, the EPA partially approved the SIP revision for non-EGU BART and partially disapproved the SIP revision, adopting a FIP for the reasonable progress goals and long-term strategy requirements that were disapproved; the EPA did not finalize the EGU BART portion of the SIP

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3 Approval and Promulgation of Implementation Plans; Texas; Public Participation for Air Quality Permit Applications, 79 FR 551 (January 6, 2014).
4 The United States Court of Appeals for the District of Columbia (D.C. Circuit Court) lifted the stay on CSAPR and the EPA began implementing the rule on January 1, 2015. However, on July 28, 2015 the D.C. Circuit Court ruled that the 2014 annual SO2 budgets and the 2014 ozone season nitrogen oxides budgets for Texas were invalid because they required overcontrol of Texas emissions, and remanded these budgets back to the EPA without vacatur.
revision (81 FR 296). On July 15, 2016, the United States Court of Appeals for the Fifth Circuit stayed EPA’s FIP of the Texas Regional Haze Rule.

Because of litigation since the 2009 Texas RH SIP revision submission, EGUs are no longer covered under CAIR or subsequent program provisions for SO₂. In accordance with a court-approved consent decree, the EPA published a proposed BART FIP on January 4, 2017 covering EGUs (82 FR 912). As required by the consent decree, the EPA signed a final FIP on September 29, 2017, to address BART requirements for Texas EGUs, specifically regarding nitrogen oxides (NOₓ), particulate matter (PM), and sulfur dioxide (SO₂). Additionally, on September 29, 2017, the EPA finalized a rule withdrawing Texas from the CSAPR Phase 2 SO₂ and Annual NOₓ Programs (82 FR 45481). The BART FIP relies on Texas' participation in the CSAPR Ozone Season NOₓ Program to fulfill NOₓ BART. Because Texas is no longer participating in the CSAPR Phase 2 SO₂ Program, CSAPR cannot be relied upon to satisfy SO₂ BART. Therefore, the FIP established an SO₂ trading program that applies to select Texas EGUs. The EPA approved the TCEQ's PM screening for EGUs from the 2009 Texas RH SIP revision, eliminating the need to require controls for PM BART. Additionally, the EPA disapproved portions of the 2009 Texas RH SIP revision regarding interstate visibility transport for the following NAAQS: 1997 eight-hour ozone; 1997 PM_{2.5} (annual and 24-hour); 2006 PM_{2.5} (24-hour); 2008 eight-hour ozone; 2010 one-hour nitrogen dioxide; and 2010 one-hour SO₂ (82 FR 48324). The EPA also made a finding that the BART alternatives adopted as the FIP meet the interstate visibility transport requirements for these NAAQS under FCAA, §110(a)(2)(D)(II).

The following chapters of 30 TAC contain rules relevant for this federal requirement:

Chap. 7 Memoranda of Understanding
Chap. 35 Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Subchapters H and K
Chap. 101 General Air Quality Rules
Chap. 116 Control of Air Pollution for New Construction or Modification

3.1.11 FCAA, §110(a)(2)(K)

Federal Requirement

(K) provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

Texas Requirement

Air quality modeling is conducted during development of attainment demonstration revisions to the Texas SIP, as appropriate for the state to demonstrate attainment with required NAAQS. Modeling is also a part of the NSR permitting program.

The following chapter of 30 TAC contains rules relevant for this federal requirement:

Chap. 116 Control of Air Pollution for New Construction or Modification
3.1.12 FCAA, §110(a)(2)(L)

Federal Requirement

(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V;

Texas Requirement

The TCEQ assesses fees for reviewing permit applications and for enforcing the terms and conditions of permits.

The following chapters of 30 TAC contain rules relevant for this federal requirement:

Chap. 12 Payment of Fees
Chap. 101 General Air Quality Rules
Chap. 106 Permits by Rule, Subchapter A, General Requirements
Chap. 116 Control of Air Pollution by Permits for New Construction or Modification

3.1.13 FCAA, §110(a)(2)(M)

Federal Requirement

(M) provide for consultation and participation by local political subdivisions affected by the plan.

Texas Requirement

The TCEQ has several cooperative agreements and Memoranda of Understanding with various other state and local agencies and organizations. Consultation with a variety of different organizations is a regular part of the TCEQ's process of developing SIP revisions.

3.2 CONCLUSION

The foregoing demonstrates that Texas has the necessary regulatory and statutory authority to meet the infrastructure requirements of FCAA, §110(a)(1) and (2) for the 2015 ozone NAAQS with the exception of FCAA, §110(a)(2)(D), which is addressed separately in the 2015 Ozone NAAQS Transport SIP revision (Project No. 2017-039-SIP-NR).
ORDER ADOPTING
REVISIONS TO THE STATE IMPLEMENTATION PLAN

Docket No. 2017-1719-SIP
Project No. 2017-040-SIP-NR

On August 8, 2018, the Texas Commission on Environmental Quality (Commission), during a public meeting, considered adoption of revisions to the State Implementation Plan (SIP). The Commission adopts the Infrastructure SIP Revision for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The SIP revision outlines the requirements of Federal Clean Air Act (FCAA), Section 110(a)(2)(A) through (C) and (E) through (M), and the Texas provisions supporting the requirements for the 2015 ozone NAAQS. These requirements include basic program elements such as: enforceable emission limitations and control measures; air quality monitoring and modeling; a permitting program; adequate funding and personnel; authority under state law to carry out the plan; emissions reporting; emergency powers; public participation; and fee collection. The transport requirements of FCAA, Section 110(a)(2)(D) are addressed in a separate SIP revision (Non-Rule Project No. 2017-039-SIP-NR). Under Tex. Health & Safety Code Ann. §§ 382.011, 382.012, and 382.023 (West 2016), the Commission has the authority to control the quality of the state’s air and to issue orders consistent with the policies and purposes of the Texas Clean Air Act, Chapter 382 of the Tex. Health & Safety Code. Notice of the proposed SIP revision was published for comment in the March 23, 2018, issue of the Texas Register (43 TexReg 1907).

Pursuant to 40 Code of Federal Regulations § 51.102 and after proper notice, the Commission conducted a public hearing to consider the SIP revision. Proper notice included prominent advertisement in the areas affected at least 30 days prior to the date of the hearing. A public hearing was held in Austin on April 10, 2018.

The Commission circulated hearing notices of its intended action to the public, including interested persons, the Regional Administrator of the EPA, and all applicable local air pollution control agencies. The public was invited to submit data, views, and recommendations on the proposed SIP revision, either orally or in writing, at the hearing or during the comment period. Prior to the scheduled hearing, copies of the proposed SIP revision were available for public inspection at the Commission’s central office and on the Commission’s website.

No comments were received regarding the SIP revision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the revisions to the SIP incorporated by reference to this Order are hereby adopted. The adopted revisions to the SIP are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IT IS FURTHER ORDERED BY THE COMMISSION that on behalf of the Commission, the Chairman should transmit a copy of this Order, together with the adopted revisions to the SIP, to the Regional Administrator of EPA as a proposed revision to the Texas SIP pursuant to the Federal Clean Air Act, codified at 42 U.S. Code Ann. §§ 7401 - 7671q, as amended.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman

Date Signed