

REVISIONS TO THE STATE IMPLEMENTATION PLAN FOR THE  
DEMONSTRATION OF CONFORMITY REGARDING STATE  
IMPLEMENTATION PLAN REVISIONS FOR AREAS THAT ARE IN  
NONATTAINMENT OR MAINTENANCE STATUS REGARDING  
THE NATIONAL AMBIENT AIR QUALITY STANDARDS



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
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**TEXAS GENERAL CONFORMITY STATE  
IMPLEMENTATION PLAN REVISION**

Project Number 2011-002-SIP-NR

Adopted October 5, 2011

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## EXECUTIVE SUMMARY

On November 16, 1994, the Texas Commission on Environmental Quality (TCEQ) adopted the General Conformity State Implementation Plan (SIP) revision. The purpose of the SIP revision was to incorporate the federal general conformity regulations in 40 Code of Federal Regulations (CFR) Parts 51 and 93 (58 *Federal Register* 63213, November 30, 1993). In August 2005, the United States Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) that eliminated the requirement for states to adopt and submit General Conformity SIP revisions. On April 5, 2010, the United States Environmental Protection Agency (EPA) adopted revisions to the general conformity regulations in 40 CFR Parts 51 and 93 (75 *Federal Register* 17254, April 5, 2010). These revisions made the adoption and submittal of the General Conformity SIP revision optional for the state and deleted all of 40 CFR Part 51, Subpart W except for §51.851. 40 CFR §51.851 was revised to clarify that if a state chooses to submit a General Conformity SIP revision, it must be consistent with the requirements of 40 CFR Part 93, Subpart B. These changes became effective on July 6, 2010.

The EPA's April 2010 revisions also added four new sections to 40 CFR Part 93: §§93.161, 93.163, 93.164, and 93.165. Under the new 40 CFR §93.161, federal agencies may negotiate a facility-wide emissions budget to be incorporated into the SIP. After the EPA approves the SIP revision, any action at the facility can be presumed to conform if the emissions from the proposed action along with all other emissions at the facility are within the approved facility-wide emissions budget. Therefore, a conformity determination would not be necessary. The new 40 CFR §93.163 allows alternate schedules for mitigating emissions increases. Federal agencies and states can negotiate a program for some emissions mitigation to occur in future years, and states can use this approach to accommodate short-term increases in emissions if the state believes that a substantial long-term reduction in emissions will result from a federal action. The new 40 CFR §93.164 allows the emissions of one precursor of a criteria pollutant to be offset by the reduction in the emissions of another precursor of that pollutant. Finally, the new 40 CFR §93.165 incorporates the use of early emissions reduction credits into the regulations. This section also provides other federal agencies with regulations and guidance similar to the Airport Early Emissions Reduction Credit program established by the United States Congress in the Federal Aviation Administration Reauthorization Act of 2003.

This General Conformity SIP revision will remove the references, in Appendix A and in Chapter 4, to the now repealed 40 CFR Part 51, subpart W and instead reference the amended 40 CFR Part 93, subpart B.

## **SECTION V: LEGAL AUTHORITY**

### **A. 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.

The first air pollution control act, known as the Clean Air Act of Texas, was passed by the Texas Legislature in 1965. In 1967, the Clean Air Act of Texas was superseded by a more comprehensive statute, the Texas Clean Air Act (TCAA), found in Article 4477-5, Vernon's Texas Civil Statutes. The legislature amended the TCAA in 1969, 1971, 1973, 1979, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, and 2009. In 1989, the TCAA was codified as Chapter 382 of the Texas Health and Safety Code.

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. 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 and the TCAA. Specifically, the authority of the TNRCC is found in Chapters 5 and 7. Chapter 5, Subchapters A - F, H - 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. This chapter also authorizes the TNRCC to implement action when emergency conditions arise and to conduct hearings. Chapter 7 gives the TNRCC enforcement authority. In 2001, the 77th Texas Legislature continued the existence of the TNRCC until September 1, 2013, and changed the name of the TNRCC to the Texas Commission on Environmental Quality (TCEQ). In 2009, the 81st Texas Legislature, during a special 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. In 2011, the 82nd Texas Legislature 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 - 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.

#### **B. 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, 2011

TEXAS WATER CODE

September 1, 2011

#### **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**

All of 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

May 2, 2002

Chapter 19: Electronic Reporting

July 10, 2008

<b>Chapter 35: Subchapters A-C, K: Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions</b>	<b>July 20, 2006</b>
<b>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</b>	<b>June 24, 2010</b>
<b>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</b>	<b>June 24, 2010</b>
<b>Chapter 101: General Air Quality Rules</b>	<b>June 24, 2010</b>
<b>Chapter 106: Permits by Rule, Subchapter A</b>	<b>January 26, 2011</b>
<b>Chapter 111: Control of Air Pollution from Visible Emissions and Particulate Matter</b>	<b>July 19, 2006</b>
<b>Chapter 112: Control of Air Pollution from Sulfur Compounds</b>	<b>July 12, 2001</b>
<b>Chapter 113: Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants</b>	<b>May 14, 2009</b>
<b>Chapter 114: Control of Air Pollution from Motor Vehicles</b>	<b>December 13, 2010</b>
<b>Chapter 115: Control of Air Pollution from Volatile Organic Compounds</b>	<b>February 17, 2011</b>
<b>Chapter 116: Permits for New Construction or Modification</b>	<b>January 6, 2011</b>
<b>Chapter 117: Control of Air Pollution from Nitrogen Compounds</b>	<b>February 4, 2010</b>
<b>Chapter 118: Control of Air Pollution Episodes</b>	<b>May 14, 2004</b>
<b>Chapter 122: §122.122: Potential to Emit</b>	<b>December 11, 2002</b>
<b>Chapter 122: §122.215: Minor Permit Revisions</b>	<b>June 3, 2001</b>
<b>Chapter 122: §122.216: Applications for Minor Permit Revisions</b>	<b>June 3, 2001</b>
<b>Chapter 122: §122.217: Procedures for Minor Permit Revisions</b>	<b>December 11, 2002</b>
<b>Chapter 122: §122.218 Minor Permit Revision Procedures for Permit Revisions Involving the Use of Economic Incentives, Marketable Permits, and Emissions Trading</b>	<b>June 3, 2001</b>

## **SECTION VI: CONTROL STRATEGY**

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- B. Ozone (No change)
- C. Particulate Matter (No change)
- D. Carbon Monoxide (No change)
- E. Lead (No change)
- F. Oxides of Nitrogen (No change)
- G. Sulfur Dioxide (No change)
- H. Conformity with the National Ambient Air Quality Standards (Revised)
  - 1. Policy and Purpose (No change)
  - 2. Summary of the Principal Elements Addressed Within This Plan (No change)
  - 3. Transportation Conformity (No change)
  - 4. General Conformity (Revised)
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  - 6. Fiscal and Manpower Resources (No change)
  - 7. Hearing Requirements (Revised)
- I. Site Specific (No change)
- J. Mobile Sources Strategies (No change)
- K. Clean Air Interstate Rule (No change)
- L. Transport (No change)
- M. Regional Haze (No change)

## **LIST OF ACRONYMS**

<b>CFR</b>	<b>Code of Federal Regulations</b>
<b>CO</b>	<b>Carbon Monoxide</b>
<b>EPA</b>	<b>United States Environmental Protection Agency</b>
<b>FCAA</b>	<b>Federal Clean Air Act</b>
<b>NAAQS</b>	<b>National Ambient Air Quality Standard</b>
<b>NO<sub>2</sub></b>	<b>Nitrogen Dioxide</b>
<b>NO<sub>x</sub></b>	<b>Nitrogen Oxides</b>
<b>PM<sub>2.5</sub></b>	<b>Particulate Matter with an Aerodynamic Diameter of Less Than or Equal to 2.5 Micrometers</b>
<b>PM<sub>10</sub></b>	<b>Particulate Matter with an Aerodynamic Diameter of Less Than or Equal to Ten Micrometers</b>
<b>SIP</b>	<b>State Implementation Plan</b>
<b>SO<sub>2</sub></b>	<b>Sulfur Dioxide</b>
<b>TAC</b>	<b>Texas Administrative Code</b>
<b>TACB</b>	<b>Texas Air Control Board</b>
<b>TCAA</b>	<b>Texas Clean Air Act</b>
<b>TCEQ</b>	<b>Texas Commission on Environmental Quality (commission)</b>
<b>THSC</b>	<b>Texas Health and Safety Code</b>
<b>TIMS</b>	<b>Texas Information Management System</b>
<b>TNRCC</b>	<b>Texas Natural Resource Conservation Commission</b>
<b>TTC</b>	<b>Texas Transportation Code</b>
<b>TWC</b>	<b>Texas Water Code</b>
<b>USC</b>	<b>United States Code</b>
<b>VOC</b>	<b>Volatile Organic Compounds</b>

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## **CHAPTER 1: POLICY AND PURPOSE**

(No revision)

**CHAPTER 2: SUMMARY OF THE PRINCIPAL ELEMENTS ADDRESSED WITHIN THIS PLAN**

(No revision)

**CHAPTER 3: TRANSPORTATION CONFORMITY**

(No revision)

## **CHAPTER 4: GENERAL CONFORMITY**

### **4.1 INTRODUCTION**

The Federal Clean Air Act Amendments (FCAA) of 1990 required the United States Environmental Protection Agency (EPA) to develop a rule outlining the procedures and criteria for determining whether or not a federal action conforms to the state implementation plan (SIP). The General Conformity rule does not apply to federal actions involving metropolitan transportation plans, transportation improvement programs, and projects funded by the Federal Highway Administration or the Federal Transit Administration. This rule applies in areas designated nonattainment or maintenance for any of the National Ambient Air Quality Standards (NAAQS). The NAAQS pollutants include ozone, carbon monoxide (CO), sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), lead, particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (PM<sub>2.5</sub>), and particulate matter with an aerodynamic diameter of less than or equal to ten micrometers (PM<sub>10</sub>). This rule also applies to the precursors of these pollutants: volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) in ozone areas; NO<sub>x</sub> in NO<sub>2</sub> areas; and SO<sub>2</sub> and NO<sub>x</sub> in PM<sub>2.5</sub> areas.

On November 16, 1994, the Texas Natural Resource Conservation Commission, now known as the Texas Commission on Environmental Quality (TCEQ), adopted the General Conformity SIP revision. The purpose of the SIP revision was to incorporate the federal general conformity regulations in 40 Code of Federal Regulations (CFR) Parts 51 and 93 (58 *Federal Register* 63213, November 30, 1993). The EPA approved the SIP revision on March 11, 1998 (47 *Federal Register* 11833). In August 2005, the United States Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) that eliminated the requirement for states to adopt and submit general conformity SIP revisions. On April 5, 2010, the EPA adopted revisions to the general conformity regulations in 40 CFR Parts 51 and 93 (75 *Federal Register* 17254, April 5, 2010). The revisions made the adoption and submittal of the general conformity SIP optional for the state and deleted all of 40 CFR Part 51, Subpart W except for §51.851. 40 CFR §51.851 was revised to clarify that if a state chooses to submit a general conformity SIP, it must be consistent with the requirements of 40 CFR Part 93, Subpart B. These changes became effective on July 6, 2010.

### **4.2 BACKGROUND INFORMATION**

The federal General Conformity rule requires each federal agency to determine whether or not their proposed actions conform to the applicable SIP. The federal General Conformity rule addresses the impacts of pollutant emissions that are caused by the federal action, that are above the de minimis levels or are regionally significant, that are reasonably foreseeable, and that can be controlled by the federal agency through its continuing program responsibility. By requiring federal actions to conform to the SIP, the general conformity rules assure that federal actions do not undermine the state's efforts to achieve clean air. The rule prohibits certain federal actions that would not conform to a SIP and reinforces the state's ability to insure the integrity of their planning decisions and the requirements specified in the SIP.

The General Conformity rule allows the state rule to be more stringent in some areas if the state rule applies to nonfederal as well as federal agencies within the state. The TCEQ does not intend, at this time, to extend the federal de minimis level down to the major modification level for each nonattainment or maintenance area. Nor does the TCEQ intend to require nonfederal entities to comply with the general conformity rules. However, the TCEQ reserves the right to make the rule more stringent as it deems necessary.

### **4.3 CRITERIA AND PROCEDURES**

The FCAA requires states to ensure that criteria and procedures for general conformity are enforceable by rule. The SAFETEA-LU of 2005 revised the FCAA conformity requirements in section 176(c), deleting a requirement that states adopt and submit a General Conformity SIP. The amended General Conformity rule makes submittal of General Conformity SIP revisions optional, at the discretion of the states. The federal rules also deleted Subpart W in 40 CFR Part 51 as duplicative of Part 93. Title 30 Texas Administrative Code §101.30, Conformity of General Federal Actions to State Implementation Plans, of the General Rules (SIP Section XIV, concerning Rules and Regulations) has been repealed to eliminate references in state rules to repealed federal rules and the need for future state rule revisions as a result of amendments to federal regulations. Federal agencies will only need to comply with the EPA General Conformity Rule requirements in 40 CFR Part 93.

**CHAPTER 5: SOCIAL AND ECONOMIC CONSIDERATIONS OF THE PLAN**

(No revision)

**CHAPTER 6: FISCAL AND MANPOWER RESOURCES**

(No revision)

## **CHAPTER 7: HEARING REQUIREMENTS**

### **7.1 PUBLIC HEARINGS FOR TRANSPORTATION CONFORMITY STATE IMPLEMENTATION PLAN (NO REVISION)**

### **7.2 PUBLIC HEARINGS FOR GENERAL CONFORMITY SIP**

A public hearing for this proposed General Conformity State Implementation Plan revision and associated rulemaking was offered in Austin on May 31, 2011, at 10:00 a.m. at the Texas Commission on Environmental Quality, Building E, Room 201S, 12100 Park 35 Circle, Austin, TX 78753. A question and answer session was held 30 minutes prior to the hearing. The hearing was not officially opened because no party indicated a desire to give comment.

The comment period opened on May 6, 2011, and closed on June 6, 2011. The commission did not receive any comments.

**APPENDIX A: *FEDERAL REGISTER* PART III, UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY, 40 CFR PART 93, SUBPART B,  
REVISIONS TO THE GENERAL CONFORMITY REGULATIONS**