recently filed motions to dismiss or withdraw the petition before institution, arguing that they should not be required to file a copy of the parties' settlement agreements, and some panels in those cases have granted the motions and terminated the proceedings without requiring the parties to file their settlement agreements. *See, e.g., Samsung Elecs. Co.* v. *Telefonaktiebolaget LM Ericsson,* IPR2021–00446, Paper 7 (PTAB Aug. 3, 2021) (Order—Dismissal Prior to Institution of Trial) (over the dissent of one Administrative Patent Judge (APJ), granting the petitioner's motion to dismiss the petition and terminating the proceeding, without requiring the parties to file their settlement agreements); *Huawei Techs. Co.* v. *Verizon Patent & Licensing Inc.,* IPR2021–00616,–00617, Paper 9 (PTAB Sept. 9, 2021) (Order—Dismissal Prior to Institution of Trial) (same dispute among a panel of APJs); *AEP Generation Res. Inc.* v. *Midwest Energy Emissions Corp.,* IPR2020–01294, Paper 11 (PTAB Dec. 14, 2020).

For consistency and predictability, the considered changes would ensure that pre-institution settlement agreements, like post-institution settlement agreements, are filed with the Board. Under the considered changes, notwithstanding that an AIA proceeding is in a preliminary stage before institution, any agreement or understanding between the patent owner and a petitioner, including any collateral agreements referred to in such agreement or understanding, made in connection with, or in contemplation of, the termination of an AIA proceeding, would be required to be in writing, and a true copy of such agreement or understanding would be required to be filed in the Office. In short, all settlement agreements between the parties made in connection with, or in contemplation of, the termination of an AIA proceeding would need to be in writing and filed with the Board. Parties would not be able to circumvent this requirement by filing merely a motion to dismiss or withdraw the petition, as granting such a motion would effectively terminate the proceeding.

In addition, as noted above, although the USPTO may grant a motion to terminate an AIA proceeding prior to or after institution based on a binding term sheet, the Office could require the filing of a true copy of any subsequent settlement agreement between the parties in connection with, or in contemplation of, the termination. Under the current practice, some panels have accepted a binding term sheet as the settlement agreement, while other panels have required a formal settlement agreement, not just a binding term sheet. For example, in several cases, panels granted a motion to terminate a proceeding based on a binding term sheet notwithstanding that a future settlement agreement was contemplated. *See, e.g., Allergan Inc.* v. *BTL Healthcare Techs. A.S.,* PGR2021–00022, Paper 17 (PTAB July 6, 2021); *Nalu Med., Inc.* v. *Nevro Corp.,* IPR2021–01023, Paper 14 (PTAB Nov. 24, 2021). In several other cases in which the parties filed or executed a binding term sheet while contemplating a settlement agreement, the panel held the motion to terminate in abeyance until the parties filed the settlement agreement, or granted a short extension of time, so the parties could avoid the expense of continued preparation of a preliminary response or other papers until the parties filed the settlement agreement. *See, e.g., Textron Inc.* v. *Nivel Parts & Mfg. Co.,* PGR2017–00035, Paper 15 (PTAB Feb. 2, 2018); *AT&T Corp.* v. *Kaifi LLC,* IPR2020–00889, Paper 9 (PTAB July 17, 2020).

The Office is considering changes to amend the rules to provide that the parties may file a binding term sheet with their motion to terminate a proceeding. Also, the Board may grant the motion to terminate based on the binding term sheet if the parties certify in their motion that: (1) there are no other agreements or understandings, including any collateral agreements, between the parties with respect to the termination of the proceeding; and (2) they will file a true copy of any subsequent settlement agreement between the parties, including collateral agreements, made in connection with the termination of the proceeding, within one month from the date that the settlement agreement is executed. A failure to timely file the subsequent settlement agreement could result in sanctions. *See* 37 CFR 42.11(a) and 42.12. The Board may maintain jurisdiction over the proceeding and the involved patent to resolve any misconduct issues or vacate its decision granting the motion to terminate.

The Office welcomes any comments on the anticipated benefits and costs to individual parties, and the economy as a whole, that may result from the proposed actions above on discretionary denial.

The Office welcomes any other additional comments or proposals on discretionary denial.

Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be significant for purposes of E.O. 12866 (Sept. 30, 1993).

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2023–08239 Filed 4–20–23; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2022–0307; FRL–10892–01–R6]

Air Plan Approval; Texas; Updates to Public Notice and Procedural Rules and Removal of Obsolete Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve portions of three revisions to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) on July 9, 2021, and January 21, 2022. The first revision, adopted on April 22, 2020, submitted on January 21, 2022, updates internal cross-references and removes or replaces obsolete provisions identified during a routine review of the Texas permitting regulations. The second revision, adopted on June 9, 2021, submitted July 9, 2021, repeals obsolete permitting provisions, and makes necessary corresponding edits to other permitting provisions. The third revision, adopted on August 25, 2021, submitted January 21, 2022, enhances the public notice requirements of the air permitting program.

DATES: Written comments must be received on or before May 22, 2023.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2022–0307, at *https://www.regulations.gov* or via email to *wiley.adina@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Adina Wiley, 214–665–2115, *wiley.adina@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Adina Wiley, EPA Region 6 Office, Air Permits Section, 214–665–2115, *wiley.adina@epa.gov.* We encourage the public to submit comments via *https://www.regulations.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that air quality meets the EPA's National Ambient Air Quality Standards (NAAQS). These ambient standards are established under section 109 of the Act and they currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The state's air regulations are contained in its SIP, which is basically a clean air plan. Each state is responsible for developing SIPs to demonstrate how the NAAQS will be achieved, maintained, and enforced. The SIP must be submitted to the EPA for approval, and any changes a state makes to the approved SIP also must be submitted to the EPA for approval.

Section 110(a)(2)(C) of the CAA requires states to develop and submit to the EPA for approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the New Source Review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. The EPA codified minimum requirements for these State permitting programs including public participation and notification requirements at 40 CFR 51.160 through 51.164. Requirements specific to construction of new stationary sources and major modifications in nonattainment areas are codified in 40 CFR 51.165 for the NNSR program. Requirements for permitting of new stationary sources and major modifications in attainment areas subject to PSD, including additional public participation requirements, are found at 40 CFR 51.166.

On July 9, 2021, the TCEQ submitted revisions to the Texas SIP that repealed obsolete provisions from the Texas permitting program and made other necessary updates to the permitting regulations to remove cross-references to the repealed provisions and renumbered existing provisions accordingly. The July 9, 2021, submittal also included updates to the Texas Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) permitting programs to allow for project emissions accounting (PEA). The EPA is addressing the PSD and NNSR specific revisions to allow for PEA in a separate rulemaking.

On January 21, 2022, Mr. Jon Nierman, Chairman of the TCEQ, submitted two revisions to the Texas SIP. The first revision was a suite of regulatory amendments that were adopted on April 22, 2020, to update cross-references and remove or replace obsolete provisions identified during a routine review of the Texas permitting program regulations. The second revision included amendments adopted on August 25, 2021, to expand the public notice requirements for the air permitting program.

II. The EPA's Evaluation

The accompanying Technical Support Document for this action includes a detailed analysis of the submitted revisions to the Texas SIP which are the subject of this proposed rulemaking. Our analysis indicates that the July 9, 2021, and two January 21, 2022, SIP revisions addressed in this proposed rulemaking action were developed in accordance with the CAA and the State provided reasonable notice and public hearing.

A. Evaluation of the Repeal of Obsolete Permitting Provisions

On June 9, 2021, the TCEQ adopted the repeal of the entirety of 30 TAC Chapter 116, Subchapter H, Permits for Grandfathered Facilities. On July 9, 2021, The TCEQ submitted the repeal of 30 TAC Sections 116.770–116.772, 116.774–116.775, 116.777–116.781, 116.783, 116.785, 116.788, and 116.790 to the EPA. The TCEQ administrative record demonstrates that these provisions are no longer needed in Texas and that any facilities that were covered by the previous rule have either submitted an appropriate permit authorization or submitted a notification of shutdown thereby negating the need for the grandfathered facilities provisions. Therefore, any previously grandfathered facilities subject to 30 TAC Chapter 116, Subchapter H are covered under other SIP-approved provisions.

The repeal of 30 TAC Chapter 116, Subchapter H, necessitated additional cleanup within the Texas permitting regulations to remove cross-references to the obsolete and repealed provisions. These revisions are identified in our accompanying Technical Support Document (TSD) and summarized below.

- 30 TAC Section 116.910(e) was deleted because the requirements in 30 TAC Chapter 116, Subchapter H were removed. Former provisions at 30 TAC Section 116.910(f) were renumbered to 30 TAC Section 116.910(e).
- Provisions in 30 TAC Section 116.911(g) were deleted because the underlying provisions in 30 TAC Chapter 116, Subchapter H were deemed obsolete and repealed.
- Provisions in 30 TAC Section 116.920(b) were deleted because the underlying provision in 30 TAC Chapter 116, Subchapter H were deemed obsolete and repealed. The remaining provisions in 116.920 were renumbered accordingly but not otherwise substantively revised.
- Provisions at 30 TAC Section 116.1530(b) removed a reference to 30 TAC Chapter 116, Subchapter H.

The EPA supports the repeal of and deletion from the Texas SIP for the above identified provisions. We also support the non-substantive, minor grammatical changes that the TCEQ submitted at 30 TAC Chapter 116, Sections 16.911(b), 116.911(e), renumbered 116.920(c) to address formatting of subscripts and acronym.

B. Evaluation of the Procedural Rule Updates

On January 21, 2022, the TCEQ submitted revisions to the Texas SIP

adopted on April 22, 2020, at 30 TAC Chapters 39, 55, 101, and 116. These amendments were identified during a routine review of the Texas regulations. The amendments remove obsolete date references, update internal cross-references, and correct grammar and punctuation. The submitted revisions to 30 TAC Sections 39.405, 39.411, 39.419. 39.420, 39.601, 39.603, 55.154, 55.156, 101.306, 116.111 and 116.112 are identified in our accompanying TSD. These revisions are approvable and necessary for the functionality of the Texas SIP.

C. Evaluation of the Public Notice Revisions

On January 21, 2022, the TCEQ submitted revisions to the Texas SIP adopted on August 25, 2021, to enhance existing public notice requirements for air permitting. The TCEQ adopted new requirements at 30 TAC Section 39.405(k) to require a plain-language summary of the application for all applications declared administratively complete on or after May 1, 2022. The applicant is required to provide a plain-language summary of the application that will describe the function of the proposed plant or facility, expected output, expected pollutants, and how the applicant will control the pollutants to show the proposed plant will not have an adverse impact on human health or the environment. The requirement for a plain-language summary for all applications will promote transparency in the air permitting process.

New 30 TAC Section 39.426 was established for alternative language requirements. This new section incorporates and expands upon the previous SIP-approved requirements that were moved from 30 TAC Section 39.405(h). This move necessitated several updates to numbering and cross-references throughout the TAC. These structural updates are approvable. The applicability of new 30 TAC Section 39.426 is established at 30 TAC Section 39.426(a) and is consistent with the previous SIP-approved applicability requirements under 30 TAC Section 39.405(h). The expansion of the alternative language requirements is reviewed in detail in the accompanying TSD and summarized below.

- New 30 TAC Section 39.426(b)(5) requires the TCEQ Office of Chief Clerk to publish the alternative language notice on the TCEQ website if there is not a publication available in the alternative language or if the publisher of the alternative language publication refuses to publish the notice. The English language notice must also include information about how to access the alternative language notice.
- New 30 TAC Section 39.426(c) requires the plain language summary of the application must be provided in the alternative language and will be posted on the TCEQ website.
- Under New 30 TAC Section 39.426(d), if alternative language notice is required, notifications of any public meetings must be provided in the alternative language. The applicant must also provide interpretative services in the alternative language if comments were received in the alternative language or there is substantial or significant public interest in translation services.
- New 30 TAC Section 39.426(e) provides the criteria to determine when the response to comments required under 30 TAC Section 55.156(b) must be provided in the alternative language.
- New 30 TAC Section 39.426(f) extends the alternative language requirements to requests for reconsideration or rehearing requests in some circumstances.
- New 30 TAC Section 39.426(g) establishes the procedures used for correcting alternative language translation errors.

III. Proposed Action

Pursuant to section 110 of the Act, we are proposing to approve the submitted revisions to the Texas SIP that update the air permitting program by removing obsolete provisions and enhancing public notice by extending requirements for alternative language notices to notices for public meetings in certain circumstances. Our analysis found that the submitted revisions are consistent with the CAA and the EPA's regulations, policy, and guidance for permitting SIP requirements.

The EPA is proposing approval of the following revisions adopted on June 9, 2021, effective on July 1, 2021, submitted to the EPA on July 9, 2021:

- Revisions to 30 TAC Section 116.910—Applicability,
- Revisions to 30 TAC Section 116.911—Electric Generating Facility Permit Application,
- Revisions to 30 TAC Sections 116.920—Public Participation for Initial Issuance,
- Revisions to 30 TAC Sections 116.1530—Best Available Retrofit Technology (BART) Control Implementation, and
- Repeal of 30 TAC Sections 116.770–116.772, 116.774, 116.775, 116.777–116.781, 116.783, 116.785–116.788, and 116.790.

The EPA is proposing approval of the following revisions adopted on April 22, 2020, effective on May 14, 2020, submitted to the EPA on January 21, 2022:

- Revisions to 30 TAC Section 39.405,
- Revisions to 30 TAC Section 39.411,
- Revisions to 30 TAC Section 39.419,
- Revisions to 30 TAC Section 39.420,
- Revisions to 30 TAC Section 39.601,
- Revisions to 30 TAC Section 39.603,
- Revisions to 30 TAC Section 55.154,
- Revisions to 30 TAC Section 55.156,
- Revisions to 30 TAC Section 101.306,
- Revisions to 30 TAC Section 116.111, and
- Revisions to 30 TAC Section 116.112.

The EPA is also proposing approval of the following revisions adopted on August 25, 2021, effective September 16, 2021, submitted to the EPA on January 21, 2022:

- Revisions to 30 TAC Section 39.405,
- Revisions to 30 TAC Section 39.412,
- Revisions to 30 TAC Section 39.418,
- Revisions to 30 TAC Section 39.419,
- New 30 TAC Section 39.426,
- Revisions to 30 TAC Section 39.602,
- Revisions to 30 TAC Section 39.604,
- Revisions to 30 TAC Sections 55.154, and
- Revisions to 30 TAC Sections 55.156.

IV. Environmental Justice Considerations

The EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within Texas.[1] The EPA then compared the data to the national average for each of the demographic groups. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that, for populations within Texas, the percent people of color (persons who reported their race as a category other than White

[1] See the United States Census Bureau's QuickFacts on Texas at *https://www.census.gov/quickfacts/fact/table/TX,US/PST045221*. This information is also available in the rulemaking docket.

alone (not Hispanic or Latino)) is less than the national average (40.3 percent versus 59.3 percent). Within people of color, the percent of the population that is Black or African American alone is lower than the national average (13.2 percent versus 13.4 percent) and the percent of the population that is American Indian/Alaska Native is lower than the national average (1.1 percent versus 1.3 percent). The percent of the population that is Hispanic or Latino is significantly higher than the national average (40.2 percent versus 18.9 percent). The percent of the population that is Two or More races is lower than the national averages (2.2 percent versus 2.9 percent). The percent of persons in poverty in Texas is higher than the national average (14.2 percent versus 11.6 percent). The percent of persons aged 25 years and older with a high school diploma in Texas is slightly lower than the national average (84.4 percent versus 88.5 percent), and the percent with a Bachelor's degree or higher is below the national average (30.7 percent versus 32.9 percent).

This action proposes to approve portions of three revisions to the Texas SIP submitted on July 9, 2021, and January 21, 2022. Final approval of these revisions to the Texas SIP will continue to enable the State of Texas to implement control strategies and permitting programs by removing obsolete provisions and enhancing public notice. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in Section III of this preamble, Proposed Action. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The state air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 17, 2023.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–08437 Filed 4–20–23; 8:45 am]

BILLING CODE 6560–50–P