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Dated: June 14, 2012.

Arne Duncan,

Secretary of Education.

Kathleen Sebelius,

Secretary of Health and Human Services.

[FR Doc. 2012–14954 Filed 6–19–12; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0332; FRL–9687–6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Antibacksliding of Major NSR SIP Requirements for the One-Hour Ozone National Ambient Air Quality Standards (NAAQS); Major Nonattainment NSR (NNSR) SIP Requirements for the 1997 Eight-Hour Ozone NAAQS; and Major NSR Reform Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the SIP for the State of Texas that relate to antibacksliding of Major NSR SIP Requirements for the one-hour ozone NAAQS; Major NNSR SIP requirements for the 1997 eight-hour ozone NAAQS; Major NSR Reform Program with Plantwide Applicability Limit (PAL) provisions; and non-PAL aspects of the Major NSR SIP requirements. EPA proposes to find that these changes to the Texas SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations and are consistent with EPA policies. Texas submitted revisions to these programs on June 10, 2005, and February 1, 2006. EPA disapproved these SIP revisions on September 15, 2010 (75 FR 56424). In response to the 2010 disapproval, Texas submitted revisions to these programs in two separate SIP submittals on March 11, 2011. These SIP submittals include resubmittal of the rules that were previously submitted June 10, 2005, and February 1, 2006, and subsequently disapproved by EPA on September 15, 2010. On February 22, 2012, Texas proposed further revisions to the NSR Reform Program to further clarify and ensure compliance with Federal requirements relating to NSR Reform. On May 3, 2012, Texas provided a letter to EPA which requested that EPA parallel process the revisions proposed February 22, 2012, and included a demonstration showing how its submitted rules are at least as stringent as the Federal NSR Reform Program. Texas has requested that EPA parallel process the revisions proposed February 22, 2012, and consider the May 3, 2012, letter in the review of the March 11, 2011, SIP submittals. Today, EPA is proposing to find that the March 11, 2011, SIP submittals; the February 22, 2012, proposed revisions; and the May 3, 2012, letter, address each of the grounds for EPA's September 15, 2010, disapproval and other issues related to the Texas NSR Reform revisions as identified later. Accordingly, EPA proposes to approve these two March 11, 2011, revisions; the February 22, 2012, proposed revisions for which Texas has requested parallel processing; and the May 3, 2012, letter as part of the Texas NSR SIP. EPA is proposing this action under section 110 and parts C and D of the Act.

DATES: Comments must be received on or before July 20, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2011–0332 by one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

(2) *Email:* Mr. Stanley M. Spruiell at *spruiell.stanley@epa.gov*.

(3) *U.S. EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm*. Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.

(4) *Fax:* Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), at fax number 214–665–6762.

(5) *Mail:* Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

(6) *Hand or Courier Delivery:* Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2011–0332. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA

Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals, which are part of the EPA docket, are also available for public inspection at the State Air Agency during official business hours by appointment: Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733; telephone (214) 665–7212; fax number (214) 665–6762; email address *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever any reference to ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. The State's Submittals

A. What is the background of the Texas programs for Major NSR for the eight-hour National Ambient Air Quality Standard for ozone and for NSR Reform?

1. Major NSR for the Eight-Hour NAAQS for Ozone

On April 30, 2004 (69 FR 23858), EPA promulgated regulations that included requirements for implementing Major NSR for the 1997 eight-hour ozone NAAQS. On May 25, 2005, the TCEQ adopted SIP revisions to implement these requirements and submitted them to EPA on June 10, 2005. The EPA disapproved these regulations September 15, 2010 (75 FR 56424). On March 11, 2011, the TCEQ resubmitted the revisions adopted May 25, 2005, and submitted further revisions, adopted February 9, 2011, to address EPA's September 15, 2010, disapproval.[1] Section I.B of this preamble includes further details of what TCEQ submitted.

2. NSR Reform

On December 31, 2002 (67 FR 80186), EPA promulgated its NSR Reform Program. On November 7, 2003 (68 FR 63021), EPA promulgated a final action on its reconsideration of the December 31, 2002, NSR Reform. On January 11, 2006, TCEQ adopted its regulations for NSR Reform and on February 1, 2006, submitted these regulations to EPA for SIP approval. The EPA disapproved these regulations September 15, 2010 (75 FR 56424). On March 11, 2011, the TCEQ resubmitted the revisions adopted January 11, 2006, and submitted further revisions, adopted February 9, 2011, to address the grounds for EPA's September 15, 2010, disapproval.[2] On February 22, 2012, TCEQ proposed additional revisions to these regulations and requested that EPA parallel process these revisions with the revisions submitted March 11, 2011–2, based upon the revisions that TCEQ proposed February 22, 2012, and subsequent submittal of those revisions following final adoption. TCEQ further submitted a letter dated May 3, 2012, to EPA to meet its Federal NSR Reform Program demonstration requirements that provides its interpretation of certain

[1] In the remainder of this document, we will refer to the Eight-Hour Ozone NSR SIP submittal as submitted March 11, 2011–1, which includes the resubmittal of the NSR Reform revisions adopted May 25, 2005, and additional revisions adopted February 9, 2011.

[2] In the remainder of this document, we will refer to the NSR Reform submittal as submitted March 11, 2011–2, which includes the resubmittal of the NSR Reform revisions adopted January 11, 2006, and additional revisions adopted February 9, 2011.

NSR Reform rules to further clarify and ensure implementation consistent with the Federal NSR Reform Program. Section I.B of this preamble includes further details of what TCEQ submitted.

B. What changes did Texas submit?

On March 11, 2011, the TCEQ submitted the following revisions to the Texas SIP:

- New Source Review for Eight-Hour Ozone Standard; Rule Project Number 2005–009–116–AI, adopted May 25, 2005. These revisions were originally submitted on June 10, 2005. EPA disapproved these SIP revisions on September 15, 2010, 75 FR 56424. The revisions submitted March 11, 2011–1, included the resubmittal of the 2005 revisions in order to reinstate before us for a new action, the rules that we disapproved in 2010.
- Federal New Source Review Permit Rules Reform; Rule Project Number 2006–010–116–PR, adopted January 11, 2006. These revisions were originally submitted on February 1, 2006. EPA disapproved these SIP revisions on September 15, 2010, 75 FR 56424. The revisions submitted March 11, 2011–2, included the resubmittal of the 2006 revisions in order to reinstate before us for a new action, the rules that we disapproved in 2010.
- New Source One-Hour Ozone Major Source Thresholds and Emission Offsets; Rule Project Number 2008–030–116–PR, submitted March 11, 2011–1.
- New Source Review (NSR) Reform; Rule Project Number 2010–008–116–PR, submitted March 11, 2011–2.

On February 22, 2012, the TCEQ proposed revisions to its NSR Reform Program and requested that the EPA parallel process these revisions. On May 3, 2012, Texas provided a letter to EPA which requested that EPA parallel process the revisions proposed February 22, 2012, and included a demonstration showing that certain of its submitted rules are at least as stringent as the Federal NSR Reform Program. The following tables summarize the rules and provide additional information relating to the submitted regulations and the revisions proposed February 22, 2012, for parallel processing and the May 3, 2012, letter. Additional information is also provided in a Technical Support Document (TSD) for this proposed action and which is in the docket.

TABLE 1—RULES SUBMITTED IN EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION

Description of SIP submittal	Texas rule project No.	Date submitted to EPA	Adopted by State	Effective as State rule	Rules addressed in this action
New Source Review for Eight-Hour Ozone Standard.	2005–009–116–AI, 2008–030–116–PR.	[a] 3/11/2011–1	5/25/2005	6/15/2005	Amended 30 TAC 116.12[c], and 116.150.
Federal New Source Review (NSR) Permit Rules Reform.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	2/1/2006	• Amended 30 TAC 116.12[c], 116.150, 116.151, 116.160, and 116.610; • Repeal of 30 TAC 116.617; and • New 30 TAC 116.121, 116.180, 116.182, 116.184, 116.186, 116.188, 116.190, 116.192, 116.194, 116.196, and 116.198.
One Hour Ozone Major Source Thresholds and Emission Offsets.	2008–030–116–PR ..	3/11/2011–1	2/9/2011	3/3/2011	Amended 30 TAC 101.1[d], 116.12[c], and 116.150
New Source Review (NSR) Reform	2010–008–116–PR ..	3/11/2011–2	2/9/2011	3/3/2011	• Amended 30 TAC 116.12[c], 116.115, 116.180, 116.182, 116.186, 116.188, 116.190, 116.192, and 116.601; • Repealed 30 TAC 116.121; and • New 30 TAC 116.127.
NSR Reform Revisions	2012–015–116–AI ...	([e])	([e])	([e])	• Amended 30 TAC 116.12(23); 116.150(a), (d)(1), and (d)(3); 116.151(a), (c)(1), and (c)(3); 116.180(a)(5); 116.186(b)(9). • Proposed revision submitted for parallel processing.
Letter of explanation and interpretation of the Texas SIP for NSR Reform.	N/A	([f])	([f])	([f])	Letter dated May 3, 2012, from TCEQ to EPA which explains and clarifies TCEQ's interpretation of sections 116.12(22) and 116.186(a), (b)(9), and (c)(2).

[a] Originally submitted June 10, 2005. Following disapproval on September 15, 2010, TCEQ on March 11, 2011–1, resubmitted the provisions that were previously disapproved to ensure that EPA considers the prior submittals in its action on the revisions submitted on March 11, 2011–1.

[b] Originally submitted February 1, 2006. Following disapproval on September 15, 2010, TCEQ on March 11, 2011–2, resubmitted the provisions that were previously disapproved to ensure that EPA considers the prior submittals in its action on the revisions submitted on March 11, 2011–2.

[c] The following provisions of 30 TAC 116.12 were addressed separately in the Texas Infrastructure SIP: The revised title, the introductory paragraph, and paragraphs (14), (17), and (18). These revisions were adopted in the two revisions under Texas Rule Project Nos. 2008–030–116–PR and 2010–008–116–PR, each adopted February 9, 2011, submitted March 11, 2011–1 and March 11, 2011–2.

[d] 30 TAC 101.1 was addressed separately in the Texas Infrastructure SIP.

[e] Proposed by TCEQ on February 22, 2012, for parallel SIP processing.

[f] Letter dated May 3, 2012, with explanation and interpretation of the Texas SIP for NSR Reform.

TABLE 2—SUMMARY OF INDIVIDUAL REVISIONS TO EACH SECTION EVALUATED

Section—Title	Texas rule project No.	Date submitted to EPA	Adopted by State	Comments
30 TAC 116.12—Nonattainment and Prevention of Significant Deterioration Review Definitions.	2005–009–116–AI, 2008–030–116–PR.	[a] 3/11/2011–1	5/25/2005	Amended paragraphs (7), (11), and (13).[d]
	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	([c d])
	2010–008–116–PR	3/11/2011–2	2/9/2011	Amended paragraphs (3), (20) and (29).[d]
	2012–015–116–AI	([e])	([e])	Amended paragraph (23).
	N/A	([f])	([f])	TCEQ's letter dated May 3, 2012, explains and clarifies TCEQ's interpretation of the definition of ''plant-wide applicability limit'' in paragraph (22).
30 TAC 116.115—General and Special Conditions.	2010–008–116–PR	3/11/2011–2	2/9/2011	Amended subparagraph (b)(2)(F).
30 TAC 116.127—Actual to Projected Actual and Emission Exclusion Test for Emissions.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Submitted as 30 TAC 116.127.
	2010–008–116–PR	3/11/2011–2	2/9/2011	Repealed; Replaced w/new 30 TAC 116.127.
30 TAC 116.150—New Major Source or Major Modification in Ozone Nonattainment Area.	2005–009–116–AI, 2008–030–116–PR.	[a] 3/11/2011–1	5/25/2005	Amended subsections (a); New subsections (b), (c), (d), and (e); Renamed subsection (b) to subsection (f).
	2005–010–116–PR, 2012–015–116–AI.	[b] 3/11/2011–1	1/11/2006	Amended subsections (a), (b), (c), (d), and (e).
	2008–030–116–PR	3/11/2011–1	2/9/2011	Amended subsections (a) and (b); Removed subsection (d); Renamed subsection (e) to subsection (d); Amended subsection (d) as renamed.
	2012–015–116–AI	([e])	([e])	Amended paragraphs (a), (d)(1), and (d)(3).[e]
30 TAC 116.151—New Major Source or Major Modification in Nonattainment Areas Other Than Ozone.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Amended subsections (a), (b), and (c).
	2008–030–116–PR	3/11/2011–1	2/9/2011	Resubmitted with no additional changes.
	2012–015–116–AI	([e])	([e])	Amended paragraphs (a), (c)(1), and (c)(3).[e]
30 TAC 116.180—Applicability	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal.
	2010–008–116–PR	3/11/2011–2	2/9/2011	Amended subsection (a).
	2012–015–116–AI	([e])	([e])	Amended paragraph (a)(5).[e]
30 TAC 116.182—Plant-Wide Applicability Limit Permit.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal.
	2010–008–116–PR	3/11/2011–2	2/9/2011	Amended paragraph (1).
30 TAC 116.184—Application Review Schedule.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal resubmitted with no additional changes.
30 TAC 116.186—General and Specific Conditions.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal.
	2010–008–116–PR	3/11/2011–2	2/9/2011	Amended subsections (a) and (b).
	2012–015–116–AI	([e])	([e])	Amended paragraph (b)(9).[e]
	N/A	([f])	([f])	TCEQ's letter dated May 3, 2012, explains and clarifies TCEQ's interpretation of paragraphs (a), (b)(9) and (c)(2).
30 TAC 116.188—Plant-Wide Applicability Limit.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal.
	2010–008–116–PR	3/11/2011–2	2/9/2011	Amended main paragraph.
30 TAC 116.190—Federal Nonattainment and Prevention of Significant Deterioration Review.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal.
	2010–008–116–PR	3/11/2011–2	2/9/2011	Amended subsection (a).
30 TAC 116.192—Amendments and Alterations.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal.
	2010–008–116–PR	3/11/2011–2	2/9/2011	Amended subsection (c).
30 TAC 116.196—Renewal of a Plant-Wide Applicability Limit Permit.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal resubmitted with no additional changes.
30 TAC 116.198—Expiration and Voidance.	2005–010–116–PR, 2010–008–116–PR.	[b] 3/11/2011–2	1/11/2006	Initial submittal resubmitted with no additional changes.

[a] Originally submitted June 10, 2005. Following disapproval on September 15, 2010, TCEQ on March 11, 2011–1, resubmitted the provisions that were previously disapproved to ensure that EPA considers the prior submittals in its action on the revisions submitted on March 11, 2011–1).

[b] Originally submitted February 1, 2006. Following disapproval on September 15, 2010, TCEQ on March 11, 2011–2, resubmitted the provisions that were previously disapproved to ensure that EPA considers the prior submittals in its action on the revisions submitted on March 11, 2011–2.

[c] In the February 1, 2006, SIP submittal (resubmitted March 11, 2011), 30 TAC 116.12 included the following revisions:
• The addition of new paragraphs (3)–(4), (7)–(8), (13)–(14), (16), (22)–(26), (29)–(31), (33)–(34), and (36).
• The following paragraphs were renumbered, consistent with the new paragraphs identified above, as follows:
—Existing paragraphs (3)–(4) to paragraphs (5)–(6), respectively;
—Existing paragraphs (5)–(8) to paragraphs (9)–(12), respectively;
—Existing paragraph (9) to paragraph (15);
—Existing paragraphs (10)–(14) to paragraphs (17)–(21), respectively;
—Existing paragraphs (15)–(16) to paragraphs (27)–(28), respectively;
—Existing paragraph (17) to paragraph (32); and
—Existing paragraph (18) to paragraph (35).
• The following existing paragraphs, as renumbered, were further revised: (1), (11), (12), (17), (18), and (20).

[d] This includes portions of 30 TAC 116.12 that were separately approved in the Texas Infrastructure SIP in which EPA approved. See 76 FR 81371, December 28, 2011. In this action, EPA approved the following: The revised title of 30 TAC 116.12; the introductory paragraph to 30 TAC 116.12; the definition of ''federally regulated NSR pollutant'' in 30 TAC 116.12(14), the definition of ''major stationary source'' in 30 TAC 116.12(17), and the definition of ''major modification'' in 30 TAC 116.12(18).''

[e] Proposed by TCEQ on February 22, 2012, for parallel SIP processing.

[f] Letter dated May 3, 2012, with explanation and interpretation of the Texas SIP for NSR Reform.

C. Why are we ''parallel processing'' and how does it work?

On February 22, 2012, Texas proposed revisions to 30 TAC 116.12(23); 116.150(a), (d)(1), and (d)(3); 116.151(a), (c)(1), and (c)(3); 116.180(a)(5); and 116.186(b)(9). In its letter dated May 3, 2012, TCEQ requested parallel processing of these proposed revisions with our processing of the two SIP revisions submitted March 11, 2011. Texas requested parallel processing to expedite the processing of its submitted and proposed revisions.

Parallel processing means that EPA proposes action on a state rule before it becomes final under state rule. See 40 CFR part 51, Appendix V, section 2.3. Under parallel processing, EPA takes final action on the State's proposal if the State's final submission is adopted substantially unchanged from the submission on which this proposed rulemaking is based, or if significant changes in the final state submission are anticipated and adequately described in EPA's proposed rulemaking, or result from needed corrections determined by the State to be necessary through review of issues described in EPA's proposed rulemaking. Final rulemaking action by EPA will occur only after the SIP revision has been fully adopted by Texas and submitted formally to EPA for incorporation into the SIP. A further discussion of these rules that we are parallel processing can be found in later sections.

II. What Action is EPA proposing to take on the antibacksliding Major NSR SIP requirements for the one-hour ozone NAAQS?

A. Background

On September 15, 2010, EPA disapproved provisions submitted June 10, 2005, and February 1, 2006, that relate to the antibacksliding Major NSR SIP requirements for the one-hour ozone NAAQS. Specifically, EPA disapproved 30 TAC 116.12(18) [3] and 116.150(d), because these submitted rules do not comply with the CAA as interpreted by the Court in *South Coast Air Quality Management District, et al.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006), reh'g denied 489 F.3d 1245 (2007) (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review). As explained below, this opinion does not require further action by EPA with respect to NSR. See 75 FR 56424, at 56429–56431.

B. What were the grounds for the September 15, 2010, disapproval?

On July 18, 1997, EPA promulgated a new NAAQS for ozone based upon eight-hour average concentrations. The eight-hour averaging period replaced the previous one-hour averaging period, and the level of NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38865). On April 30, 2004 (69 FR 23951), EPA published a final Phase 1 Implementation Rule that addressed key elements related to implementation of the 1997 eight-hour ozone NAAQS, including, but not limited to: (1) Revocation of the one-hour NAAQS; and (2) How anti-backsliding principles will ensure continued progress toward attainment of the 1997 eight-hour ozone NAAQS. We codified the anti-backsliding provisions governing the transition from the revoked one-hour ozone NAAQS to the 1997 eight-hour ozone NAAQS in 40 CFR 51.905(a). The one-hour ozone major nonattainment NSR SIP requirements indicated that certain one-hour ozone standard requirements were not part of the list of anti-backsliding requirements provided in 40 CFR 51.905(f).

On December 22, 2006, the DC Circuit vacated the Phase 1 Implementation Rule in its entirety in the *South Coast* decision. EPA requested rehearing and clarification of the ruling; and on June 8, 2007, the Court clarified that it was vacating the rule only to the extent that it had upheld petitioners' challenges. Thus, the Court vacated the provisions in 40 CFR 51.905(e) that waived obligations under the revoked one-hour standard for NSR. The court's ruling, therefore, maintains major nonattainment NSR applicability thresholds and emission offset ratios pursuant to classifications previously in effect for areas designated nonattainment for the one-hour ozone NAAQS.

On June 10, 2005, and February 1, 2006, Texas submitted SIP revisions to 30 TAC 116.150 which relate to the transition from the major nonattainment NSR requirements applicable for the one-hour ozone NAAQS to implementation of the major nonattainment NSR requirements applicable to the 1997 eight-hour ozone NAAQS. Texas' revisions to the introductory paragraph to subsection (d) of 30 TAC 116.150, effective as state law on June 15, 2005, provided that for ''the Houston-Galveston-Brazoria, Dallas-Fort Worth, and Beaumont-Port Arthur eight-hour ozone nonattainment areas, if the United States Environmental Protection Agency promulgates rules requiring new source review permit applications in these areas to be evaluated for nonattainment new source review according to the area's one-hour standard classification,'' then ''each application will be evaluated according to that area's one-hour standard classification'' and ''* * * the de minimis threshold test (netting) is required for all modifications to existing major sources of VOC or NO_X in that area * * *'' The introductory paragraph of 30 TAC 116.150(d) adds a new requirement for an affirmative

[3] In a separate action, EPA approved the submitted revisions to 30 TAC 116.12(18)—definition of major modification—in the Texas Infrastructure SIP. We approved the Texas Infrastructure SIP on December 28, 2011 (76 FR 81371). Accordingly, this evaluation only addresses the submitted revisions to 30 TAC 116.150(d). All references, herein, to the portions of 30 TAC 116.12 that were approved in the Texas Infrastructure SIP are for informational purposes only.

regulatory action by EPA on the reinstatement of the one-hour ozone NAAQS major NNSR requirements before the legally applicable major NNSR requirements under the one-hour ozone standard will be implemented in the Texas one-hour ozone nonattainment areas.

The approved Texas major NNSR SIP did not require such an affirmative regulatory action by EPA before the one-hour ozone major NNSR requirements come into effect in the Texas one-hour ozone nonattainment areas. The SIP had stated at 30 TAC 116.12(11) [4] (Footnote 1 under Table I) that ''Texas nonattainment area designations are specified in 40 Code of Federal Regulations § 81.344.'' That section included designations for the one-hour standard as well as the eight-hour standard. Moreover, the submitted revisions to 30 TAC 116.150(d) did not comport with the *South Coast* decision as discussed above.

The court opinion maintains the lower applicability thresholds and more stringent offset ratios for a one-hour ozone nonattainment area whose classification under that standard was higher than its nonattainment classification under the eight-hour standard. In the June 10, 2005, and February 1, 2006, submitted rule revisions, the lower applicability thresholds and more stringent offset ratios for a classified one-hour ozone nonattainment area were not required in a Texas one-hour ozone nonattainment area unless and until EPA promulgated a rulemaking implementing the *South Coast* decision. See 75 FR 56424, at 56429 and 56431.

C. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–1, the TCEQ submitted the following amendments to 30 TAC 116.150: [5]

- The removal of paragraphs (a)(1) through (a)(2) and subsection (d); and
- Revised the introductory paragraph to subsection (a) and added new paragraphs (a)(1) through (a)(4) which clarify that permitted facilities in areas that were designated nonattainment for the one-hour ozone standard are subject to the major source thresholds and emission offset requirements of the one-hour ozone standard unless one of the four exceptions identified in 30 TAC 116.150(a) apply. TCEQ amended 30 TAC 116.150(a) to add a requirement for continued applicability of NNSR until: (1) EPA has made a finding of attainment; (2) EPA has approved the removal of NNSR requirements from the area; (3) EPA has determined that the Prevention of Significant Deterioration (PSD) requirements apply in the area; or (4) NNSR is no longer required for purposes of antibacksliding.

As the result of EPA's comments received on the proposal of these amendments the TCEQ changed 30 TAC 116.150(a)(1) through (a)(4) to make clear that the conditions on which these exceptions are based must exist on the date of issuance of the permit.

The TCEQ also removed 30 TAC 116.150(d) from the rule. Subsection (d) contained language that indicated that the EPA must complete rulemaking before NSR applications are evaluated according to their one-hour classification. As stated above, the *South Coast* decision is self-implementing, did not require rulemaking by the EPA to be effective, and NSR applications should be evaluated based upon one-hour classifications if they are more stringent than an area's eight-hour classification. TCEQ also renumbered the remainder of 30 TAC 116.150 to reflect the removal of 30 TAC 116.150(d) and minor changes to references in 30 TAC 116.150(b) to reflect the renumbering. TCEQ also changed 30 TAC 116.150(e) to reflect changes in a concurrent rulemaking in Chapter 101.[6]

TCEQ states that these changes ensure that when changes are made to maintenance areas and nonattainment areas as a result of Federal action, these rules will not be rendered incorrect. Also, for the one-hour ozone NAAQS, the designations and classifications in 40 CFR Part 81 were retained by EPA for purposes of anti-backsliding (See 70 FR 44470, August 3, 2005). The TCEQ also removed the language ''to prevent anti-backsliding'' and replaced it with ''for the purposes of anti-backsliding'' since the intent of the rule is to prevent backsliding and promote anti-backsliding.

D. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

The submitted revisions to 30 TAC 116.150 now meet the Federal requirements regarding antibacksliding under *South Coast.* The submitted revision to 30 TAC 116.150(a), as discussed above, ensures that TCEQ will continue to require compliance with the NNSR requirements of the one-hour ozone standard until: (1) EPA has made a finding of attainment; (2) EPA has approved the removal of NNSR requirements from the area; (3) EPA has determined that PSD requirements apply in the area; or (4) NNSR is no longer required for purposes of antibacksliding.

The TCEQ also removed 30 TAC 116.150(d) from the rule. Subsection (d) had provided that the permitting requirements for the one-hour ozone nonattainment areas would not apply unless EPA later promulgates rules that reinstate the permitting requirements for the one-hour ozone standard. The removal of subsection (d) reinstates the requirement to follow the NNSR requirements of the one-hour ozone standard unless the EPA makes any of the findings described in subsection (a)(1) through (a)(4), as described above.

These revisions satisfy the requirements of *South Coast* as discussed above and address EPA concerns related to Anti-Backsliding Major NSR SIP Requirements for the one-hour Ozone NAAQS. Accordingly, these revisions satisfy the requirements for SIP approval. EPA proposes to approve the submitted revisions to 30 TAC 116.150 as described herein.

III. What action is EPA proposing to take on the Major Nonattainment NSR SIP requirements for the 1997 eight-hour ozone NAAQS?

A. Background

On September 15, 2010, EPA disapproved revisions to 30 TAC 116.150(a) submitted June 10, 2005, and February 1, 2006. EPA disapproved this rule because it provided that an applicability determination for a Major NNSR permit is to be based upon the date of administrative completeness, rather than the date of permit issuance. This would allow more sources to avoid the Major NSR requirements where there is a nonattainment designation between the date of administrative completeness and the date of issuance.

[4] The currently approved 30 TAC 116.12(11) was renumbered to 30 TAC 112.12(18) in the February 1, 2006, submittal. This renumbering of, and revisions to, the definition, as resubmitted March 11, 2011–1, was approved December 28, 2011, in our action on the Texas Infrastructure SIP.

[5] TCEQ also submitted revisions to 30 TAC 116.12(18)(A)(1) concerning major modification and 30 TAC 101.1 to address this ground for SIP disapproval. EPA addressed these rules separately in the Texas Infrastructure SIP which contains the evaluation of the revisions to these sections. This action only addresses the revisions to 30 TAC 116.150 that were submitted to address this ground for disapproval.

[6] The SIP revision submitted on March 11, 2011–1, includes a nonsubstantive revision to 30 TAC 116.150(e) which provides that the requirements for nitrogen oxides (NO_X) do not apply in the El Paso nonattainment area. The revision removes the reference to areas as defined in 30 TAC 101.1 and replaced it with the area as defined in 40 CFR part 81. In this SIP submittal, Texas also made similar changes to 30 TAC 101.1 to refer to the areas as defined in 40 CFR part 81. EPA approved these revisions to 30 TAC 101.1 in its action on the Texas Infrastructure SIP on December 28, 2011.

B. What were the grounds for the September 15, 2010, disapproval?

EPA interprets its Major NSR SIP rules to require that an applicability determination regarding whether Major NSR applies for a pollutant should be based upon the designation of the area in which the source is located on the date of issuance of the Major NSR permit. EPA also interprets the Act and its rules to require that if an area is designated nonattainment on the date of issuance of a Major NSR permit, then the Major NSR permit must be an NNSR permit, not a PSD permit. If the area is designated attainment/unclassifiable on the date of issuance of a Major NSR permit, then under EPA's interpretation of the Act and its rules, the Major NSR permit must be a PSD permit. See sections 160, 165, 172(c)(5) and 173 of the Act; and 40 CFR 51.165(a)(2)(i) and 51.166(a)(7)(i). EPA's interpretation of these statutory and regulatory requirements is guided by the memorandum issued March 11, 1991, and titled ''New Source Review (NSR) Program Transitional Guidance,'' by John S. Seitz, Director, Office of Air Quality Planning and Standard (1991 Transitional Guidance).[7]

The revisions to 30 TAC 116.150(a), submitted June 10, 2005, and February 1, 2006, were not clear as to when and where the applicability date will be set by the date the application is administratively complete and when and where the applicability date will be set by the issuance date of the authorization. The rule, adopted and submitted in 2005, relied on the date of administrative completeness of a permit application, not the date of permit issuance and applied to NSR authorizations that are administratively complete after June 15, 2004 (the effective date of eight-hour ozone nonattainment designations). The submitted 2006 rule added the date of permit issuance. Unfortunately, the 2006 rule introduced a bifurcated structure which created vagueness rather than clarity. The effective date of that new bifurcated structure was February 1, 2006. It was unclear whether this revision meant that the permit issuance date was to be used in existing nonattainment areas designated nonattainment for ozone before and up through February 1, 2006. Thus, the proposed revision lacked clarity on its face and was therefore not enforceable.

Furthermore, to the extent that the date of application completeness was used in certain instances to establish the applicability date for NNSR requirements, such use is contrary to EPA's interpretation of the Act and the governing EPA regulations, as discussed above.

Thus, based upon the above and in the absence of any explanation by the State, EPA disapproved the SIP revision submittals for not meeting the Major NNSR SIP requirements for the 1997 eight-hour ozone standard. See 75 FR 56424, at 56431–56432 and 56433.

C. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–1, the TCEQ amended 30 TAC 116.150(a) to apply its requirements as of the date of issuance of the permit.

D. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

The submitted revision to 30 TAC 116.150 now applies its requirements as of the date of issuance of the permit. This amendment satisfies the requirements of sections 160, 165, 172(c)(5), and 173 of the Act; and 40 CFR 51.165(a)(2)(i) and 51.166(a)(7)(i). It also meets EPA's interpretation of these statutory and regulatory requirements as guided by the 1991 Transitional Guidance. These revisions satisfy the requirements for SIP approval. Accordingly, EPA proposes to approve the submitted revisions to 30 TAC 116.150 as described above.

IV. What action is EPA proposing to take on the Major NSR Reform Program with Plantwide Applicability Limit (PAL) provisions?

A. Background

On September 15, 2010, EPA disapproved provisions of the SIP revisions submitted February 1, 2006, which relate to the Major NSR Reform Program with Plantwide Applicability Limit (PAL) provisions. The reasons for this disapproval are described below.

B. EPA's Evaluation of the Grounds for Disapproval and Texas' Revisions To Address These Grounds

1. The February 1, 2006, SIP Submittal Lacked a Provision That Limits Applicability of a PAL to an Existing Major Stationary Source

a. What were the grounds for the September 15, 2010, disapproval?

The February 1, 2006, submittal failed to limit the applicability of PALs to existing major stationary sources, as required under 40 CFR 51.165(f)(1)(i) and 40 CFR 51.166(w)(1)(i). In EPA's November 2002 Technical Support Document for the revised Major NSR Regulations,[8] we state on pages I–7–27 and 28 that actuals PALs are available only for existing major stationary sources, because actuals PALs are based on a source's actual emissions. Without at least 2 years of operating history, a stationary source has not established actual emissions upon which to base an actuals PAL. This is consistent with EPA's longstanding interpretation of the Act. Therefore, an actuals PAL can be obtained only for an existing major stationary source.[9] [10] See 75 FR 56424, at 56433, 56435, and 56438.

b. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–2, TCEQ submitted a revision to 30 TAC 116.180 that added a new paragraph (a)(5) which restricted the issuance of PAL permits to existing major stationary sources. This revision only addressed the ground for disapproval for nonattainment pollutants but failed to provide a corresponding requirement for addressing this ground in the case of PSD pollutants.

In the State's February 22, 2012, proposed rulemaking parallel reviewed by EPA for this proposal action, the TCEQ proposed two revisions to paragraph (a)(5) as follows: (1), TCEQ proposed to correct the citation to the Federal definition of ''major stationary source'' in 40 CFR 51.165 (applicable to nonattainment pollutants); and (2) TCEQ proposed to add a citation of the definition of ''major stationary source'' in 40 CFR 51.166 (applicable to PSD pollutants).

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

As described above, the revisions to 30 TAC 116.180(a)(5) submitted March 11, 2011–2, and the revisions proposed February 22, 2012, and reviewed by EPA for this proposal action revise this section to provide that a PAL can only

[7] You can access the 1991 Transitional Guidance at: *http://www.epa.gov/ttn/nsr/gen/nstrans.pdf.*

[8] The Technical Support Document for the 2002 NSR rule making is available at: *http://www.epa.gov/air/nsr/documents/nsr-tsd_11-22-02.pdf.*

[9] A PAL Permit at an existing major stationary source may include individual emissions units that have operated for less than two years (i.e., new emissions units). For new emissions units on which actual construction began after the 24-month baseline period, the PAL would include the potential to emit of new emissions units. See 40 CFR 51.165(f)(6)(ii) and 51.166(w)(2)(ii).

[10] Moreover, the development of an alternative method to provide new major stationary sources with the option of obtaining a PAL based on allowable emissions was foreclosed by the Court in *New York* v. *EPA,* 413 F.3d 3 at 38–40 (DC Cir. 2005) (''New York I'') (holding that the Act since 1977 requires a comparison of existing actual emissions before the change and projected actual (or potential emissions) after the change in question is required).

be issued for an existing major stationary source as defined in 40 CFR 51.165(a)(1)(iv)(A) and 40 CFR 51.166(b)(1). These revisions fully address this ground for disapproval of the submitted PAL Program. Accordingly, EPA proposes to approve these amendments to 30 TAC 116.180(a)(5) as submitted March 11, 2011–2, and the proposed amendments to this rule proposed February 22, 2012.

2. The February 1, 2006, SIP Submittal Had No Provisions That Relate to PAL Re-Openings

a. What were the grounds for the September 15, 2010, disapproval?

The February 1, 2006, SIP submittal had no provisions that relate to PAL re-openings, as required by 40 CFR 51.165(f)(8)(ii) and 51.166(w)(8)(ii). The Federal rules provide for PAL re-openings for the following: correction of typographical/calculation errors in setting the PAL; reduction of the PAL to create creditable emission reductions for use as offsets; reductions to reflect newly applicable Federal requirements (for example, New Source Performance Standards (NSPS)) with compliance dates after the PAL; PAL reduction consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the SIP; and PAL reduction if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager for which information is available to the general public. Texas had submitted no demonstration, as required for a customized Major NSR SIP revision submittal, that the lack of provisions for PAL re-openings is at least as stringent as the Federal PAL Program SIP requirements. See 75 FR 56424, at 56433, 56435–56436, and 56438.

b. What did Texas submit to address the grounds for disapproval?

In revisions submitted March 11, 2011–2, TCEQ addressed this issue by the addition of 30 TAC 116.192(c) which provides that during the PAL effective period the Executive Director shall reopen a PAL: to correct typographical calculation errors made in setting the PAL or to reflect a more accurate determination of emissions used to establish a PAL; to decrease the PAL limit that the owner or operator of a major stationary source creates to establish creditable emissions reductions that meet the requirements of 40 CFR 51.165(a)(3)(ii) for use as offsets; and to revise the PAL to reflect an increase in the PAL provided the owner or operator complies with the requirements of 40 CFR 52.21(aa)(11) and 51.165(f)(11).

This revision also provides that the Executive Director may reopen a PAL: to revise the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date; to revise the PAL to be consistent with any other requirement that is enforceable as a practical matter and that the State may impose on the major stationary source under the SIP; or to reduce the PAL if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager for which information is available to the general public.

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

As discussed above, the revisions submitted March 11, 2011–2 to 30 TAC 116.192(c) and TCEQ's evaluation of these revisions meet the requirements of 40 CFR 51.165(f)(8)(ii) and 51.166(w)(8)(ii). Accordingly, EPA proposes to approve the revisions to 30 TAC 116.192(c) submitted March 11, 2011–2.

3. There Was No Mandate That Failure To Use a Monitoring System That Meets the Requirements in the PAL Renders the PAL Invalid

a. What were the grounds for the September 15, 2010, disapproval?

The rules submitted February 1, 2006, had no provision requiring that the failure to use a monitoring system that meets the requirements for a PAL renders the PAL invalid, as required by 40 CFR 51.165(f)(12)(i)(D) and 51.166(w)(12)(i)(d). See 75 FR 56424, at 56433 and 56438.

b. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–2, TCEQ submitted revisions to 30 TAC 116.186 that added a new paragraph (b)(9) to provide that ''[f]ailure to use a monitoring system that meets the minimum requirements of this section is a violation of the PAL permit.''

In the State's February 22, 2012, proposed parallel rulemaking parallel reviewed by EPA for this proposal action, TCEQ proposed revisions to paragraph (b)(9) to remove the text ''is a violation of the PAL permit'' and replaced that text with ''renders the PAL invalid.''.

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

The revision submitted March 11, 2011–2, to add 30 TAC 116.186(b)(9), differed from the Federal requirements at 40 CFR 51.165(f)(12)(i)(D) and 51.166(w)(12)(i)(d). The submitted rule provided that failure to use a monitoring system that meets the minimum requirements of this section is a violation of the PAL permit, whereas the Federal requirements provide that such failure renders the PAL permit invalid. By providing that such failure to use a required monitoring system is simply a violation of the PAL permit, the source retained its PAL notwithstanding the enforcement liability that could result from such failure to use the required monitoring and did not comport with the Federal requirement that provides that failure to use the required monitoring renders the PAL invalid. As submitted March 11, 2011–2, paragraph (b)(9) does not meet the requirements for SIP approval. However, the revision proposed February 22, 2012, would amend paragraph (b)(9) to state that failure to use the required monitoring would render the PAL permit invalid.

In the State's February 22, 2012, proposed rulemaking parallel reviewed by EPA for this proposal action, TCEQ proposes to amend 30 TAC 116.186(b)(9) to remove the language that failure to use the required monitoring is a violation of PAL permit and to replace it with language that provides that such failure renders the PAL Permit invalid. The State's proposed February 22, 2012, rulemaking would meet the Federal requirements at 40 CFR 51.165(f)(12)(i)(D) and 51.166(w)(12)(i)(d). Accordingly, EPA proposes to approve 30 TAC 116.186(b)(9) as submitted March 11, 2011–2, and the revision proposed to this rule on February 22, 2012.

4. The February 1, 2006, Submittal of 30 TAC 116.182 and 116.186 Provided for an Emission Cap That May Not Account for All of the Emissions of a Pollutant at a Major Stationary Source

a. What were the grounds for the September 15, 2010, disapproval?

The February 1, 2006, submittal at 30 TAC 116.182 and 116.186 provided for an emissions cap that may not account for all of the emissions of a pollutant at the major stationary source. Texas required the owner or operator to

submit a list of all facilities to be included in the PAL, such that not all of the facilities at the entire major stationary source may be specifically required to be included in the PAL. See 30 TAC 116.182(1) and 116.186(a). However, the Federal rules require the owner or operator to submit a list of all emissions units at the source. See 40 CFR 51.165(f)(3)(i) and 40 CFR 51.166(w)(3)(i). The Texas submittal was unclear as to whether the PAL would apply to all of the emission units at the entire major stationary source and therefore appeared to be less stringent than the Federal rules. In the absence of any demonstration from the State, EPA disapproved 30 TAC 116.186 and 30 TAC 116.182(1) as not meeting the revised Major NSR SIP requirements. See 75 FR 56424, at 56433–56434 and 56438.

b. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–2, Texas submitted the following revisions to address these grounds for disapproval:

30 TAC 116.180, Applicability. The following revisions were submitted:

- Removal of the term ''account site'' from 30 TAC 116.180(a)(1) and replacement with the term ''existing major stationary source'' to make this requirement more consistent with Federal requirements. Similar changes were made to 30 TAC 116.180(a)(3) and (4).
- The term ''facility'' as defined in the Texas Clean Air Act (TCAA) was defined to correspond Federal term ''emissions unit,'' by adding the language ''or emissions unit'' whenever the term facility is used (i.e., 30 TAC 116.180(a)(3), (b) and (c)).[11]
- Additionally, the proposed revision's use of the phrase ''at a major stationary source'' and the term ''emissions unit'' in a corresponding fashion in this section and elsewhere in the Commission's PAL rules was clarified, by adding the phrase ''at a major stationary source'' to each instance of the term ''emissions unit.'' This removed any ambiguity by clarifying that both terms are being used interchangeably and in a manner that is consistent with EPA's use of the term in NSR permitting.

30 TAC 116.182 Plant-Wide Applicability Limit Permit Application. To address EPA's concern that 30 TAC 116.182(1) might not require all facilities to be included in the PAL, the TCEQ amended 30 TAC 116.182(1) by adding the phrase ''at a major stationary source'' where appropriate to make clear that PALs are applicable to major sources only. Additionally, as the result of comments in the EPA's final disapproval (75 FR 56424, September 15, 2010), the TCEQ added language to require that all emission units at the major stationary source that emit the PAL pollutant be included in the PAL permit application.

30 TAC 116.186 General and Special Conditions. To address EPA's concern that 30 TAC 116.186 might not require all facilities to be included in the PAL, the TCEQ amended 30 TAC 116.186 by adding the language ''or emissions unit'' where the term facility is used in subsection (a) and paragraph (b)(1) and changing the word ''Federal'' to ''major'' in paragraph (b)(1) to clarify the type of NSR referenced in this paragraph. Also, the TCEQ added the phrase ''at a major stationary source'' where appropriate to make clear that PALs are applicable to major stationary sources only. Also, as the result of comments in the EPA's final disapproval, the TCEQ added language to require that all emission units at the major stationary source that emit the PAL pollutant be included in the PAL permit.

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

As discussed above, the revisions submitted March 11, 2011–2, meet the requirements of 40 CFR 51.165(f)(3)(i) and 51.166(w)(3)(i). Accordingly, EPA is proposing to approve these revisions to 30 TAC 116.180, 116.182, and 116.186.

5. The February 1, 2006, Submittal of Baseline Actual Emissions Did Not Provide That Emissions Be Calculated in Terms of the Average Rate, in Tons per Year

a. What were the grounds for the September 15, 2010, disapproval?

The Federal definition of the ''baseline actual emissions'' provides that these emissions must be calculated in terms of ''the *average* rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period.'' See 40 CFR 51.165(a)(1)(xxxv)(A), (B), (D), and (E) and 51.166(b)(47)(i), (ii), (iv), and (v). Emphasis added. Texas' February 1, 2006, submittal of the definition of ''baseline actual emissions'' at 30 TAC 116.12(3)(A), (B), (D), and (E), differed from the Federal definition by providing that the baseline shall be calculated as ''the rate, in tons per year at which the unit actually emitted the pollutant during any consecutive 24-month period.'' The definition omits reference to the ''average rate.'' The definition differed from the Federal definition but the State failed to provide a demonstration showing how the different definition is at least as stringent as the Federal definition. Therefore, EPA disapproved the different definition of ''baseline actual emissions'' found at 30 TAC 116.12(3) as not meeting the revised Major NSR SIP requirements. On the same grounds for lacking a demonstration, EPA disapproved 30 TAC 116.182(2) that refers to calculations of the baseline actual emissions for a PAL, as not meeting the revised Major NSR SIP requirements. See 75 FR 56424, at 56434–56435, and 56438.

b. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–2, the TCEQ submitted revisions to the definition of ''baseline actual emissions'' at 30 TAC 116.12(3)(A), (B), (D), and (E), that specify that the rate is an average rate.

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

As described above, the submitted change to the definition of ''baseline actual emissions'' in 30 TAC 116.12(3)(A), (B), (D), and (E), to specify that the rate is an average rate, now meets the Federal requirements under 40 CFR 51.165(a)(1)(xxxv)(A), (B), (D), and (E) and 51.166(b)(47)(i), (ii), (iv), and (v). Accordingly, EPA is proposing to approve the revisions to 30 TAC 116.12(3)(A), (B), (D), and (E). For further information see the TSD for this proposal.[12]

6. The State Failed To Include Specific Definitions of Continuous Emissions Monitoring System (CEMS), Continuous Emissions Rate Monitoring System (CERMS), Continuous Parameter Monitoring System (CPMS), and Predictive Emissions Monitoring System (PEMS)

a. What were the grounds for the September 15, 2010, disapproval?

The TCEQ failed to include the following specific monitoring definitions in the March 11, 2011–2, submittal: ''continuous emissions monitoring system (CEMS)'' as defined in 40 CFR 51.165(a)(1)(xxxi) and 51.166(b)(43); ''continuous emissions rate monitoring system (CERMS)'' as defined in 40 CFR 51.165(a)(1)(xxxiv)

[11] See section V.B.1 of this preamble for further discussion on how TCEQ addresses the use of ''facility'' for ''emissions unit'' in its Non-PAL NNSR Program.

[12] A similar issue in the Non-PAL Program is addressed in section V.B.3 of this preamble.

and 51.166(b)(46); ''continuous parameter monitoring system (CPMS)'' as defined in 40 CFR 51.165(a)(1)(xxxiii) and 51.166(b)(45); and ''predictive emissions monitoring system (PEMS)'' as defined in 40 CFR 51.165(a)(1)(xxxii) and 51.166(b)(44). All of these definitions concerning the monitoring systems in the revised Major NSR SIP requirements are essential for the enforceability of and providing the means for determining compliance with a PALs program. Additionally, whereas here, a State has made a SIP revision that does not contain definitions that are required in the revised Major NSR SIP program, EPA may approve such a revision only if the State specifically demonstrates that, despite the absence of the required definitions, the submitted revision is more stringent, or at least as stringent, in all respects, as the Federal program. See 40 CFR 51.165(a)(1) (non-attainment SIP approval criteria); 40 CFR 51.166(b) (PSD SIP definition approval criteria). Texas did not provide such a demonstration. Therefore, EPA disapproved the submitted rule based on the lack of these definitions as not meeting the revised Major NSR SIP requirements. See 75 FR 56424, at 56434 and 56438.

b. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–2, TCEQ submitted revisions to 30 TAC 116.186(c)(1) which provided that the definitions of CEMS, CERMS, CPMS, and PEMS are the same as provided in 40 CFR 51.165.

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

The revisions described above incorporate the Federal definitions of CEMS, CERMS, CPMS, and PEMS into the State's PAL Program and therefore meet the applicable Federal requirements. Accordingly, EPA proposes to approve the revisions to 30 TAC 116.186(c)(1) which incorporates these definitions.

C. Other Concerns With the Major NSR Reform Program With Plantwide Applicability Limit (PAL) Provisions

1. Submittal of 30 TAC 116.12(23)—Definition of ''Plant-Wide Applicability Limit Effective Date''

a. Background

On February 1, 2006, Texas submitted the definition of ''plant-wide applicability limit effective date'' at 30 TAC 116.12(23). On September 15, 2010 (75 FR 56424) EPA disapproved the Texas NSR Reform SIP revisions submitted February 1, 2006, including 30 TAC 116.12(23). On March 11, 2011–2, Texas resubmitted 30 TAC 116.12(23) without additional changes.

In the State's February 22, 2012, proposed rulemaking parallel reviewed by EPA for this proposal action, TCEQ proposed to revise the definition to remove language that references the date that a Flexible Permit was issued. Since PAL Permits and Flexible Permits are addressed by two different sets of rules in Chapter 116, it is inappropriate to reference Flexible Permits in the definition of ''plant-wide applicability limit effective date.''

b. What is EPA's evaluation of the submitted SIP revision of 30 TAC 116.12(23)?

The definition of ''plant-wide applicability limit effective date'' at 30 TAC 116.12(23), submitted February 1, 2006, and resubmitted March 11, 2011–2, includes a provision that such effective date for a PAL established in an existing Flexible Permit is the date that the Flexible Permit was issued. Because EPA disapproved Texas' Flexible Permit Program on July 15, 2010 (75 FR 41312), this provision appears to say that a source with a Flexible Permit could get a SIP-approved PAL that could retroactively recognize a prior Flexible Permit that should not have been issued.

The State's proposed February 22, 2012, rulemaking reviewed by EPA for this proposal action would remove the reference to Flexible Permits from the definition of ''plant-wide applicability limit effective date'' at 30 TAC 116.12(23). This will address these concerns. Accordingly, EPA proposes to approve the definition of ''plant-wide applicability limit effective date'' in 30 TAC 116.12(23) as submitted March 11, 2011–2, and the amendments proposed February 22, 2012, to remove the language that refers to Flexible Permits.

2. Submittal of 30 TAC 116.12(22)—Definition of ''Plant-Wide Applicability Limit''—and 30 TAC 116.186(a)

a. Background

The TCEQ submitted this definition on March 11, 2011–2. This definition does not specifically provide that the emission limitation in a PAL must be ''enforceable as a practical matter'' or ''practical enforceability'' as required by 40 CFR 51.165(f)(2)(v) and 51.166(w)(2)(v). Similarly, the provisions of 30 TAC 116.186(a), submitted on March 11, 2011–2, likewise do not specifically provide that the emission limitation in a PAL must be ''enforceable as a practical matter'' as required by 40 CFR 51.165(f)(4)(i)(A) and 51.166(w)(4)(i)(a). The omission of the requirement that the PAL be enforceable as a practical matter raises the question of how the rules meet Federal enforceability requirements.

b. What is EPA's evaluation of the submitted revisions to 30 TAC 116.12(22) and 116.186(a)?

The 2002 NSR Reform rule discusses practical enforceability in the preamble of its NSR Reform rule. Here we say that ''[p]ractical enforceability for a source-specific permit will be achieved if the permit's provisions specify: (1) A technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, monthly, and annual limits such as rolling annual limits); and (3) the method to determine compliance, including appropriate monitoring, recordkeeping, and reporting.'' See 67 FR 80186, at 80190–80191, December 31, 2002. For PALs, EPA discussed the monitoring, recordkeeping, and reporting requirements for a PAL and characterized these requirements as addressing a number of issues associated with practical enforceability of PALs. See 67 FR 80186, at 80211–80214.

EPA's interpretation of the term ''practical enforceability'' in the context of the CAA is discussed in the guidance memorandum *Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act),* by John S. Seitz, Director, Office of Air Quality Planning and Standards, and Robert I. Heuvelen, Director, Office of Regulatory Enforcement, dated January 25,1995.[13] See pages 46 and 47 of the guidance.

On May 3, 2012, the TCEQ forwarded a letter to EPA which includes a written demonstration as required by 40 CFR 51.165(a)(1) and 51.166(b); section 110(l) of the CAA [14]; and the discussion at 67 FR 80186, at 80341 (December 31, 2002) [15] for how the definition of ''plantwide applicability limit'' provides that emission limits in its PAL Permits meets the Federal requirements for

[13] This guidance is available on-line at *http://www.epa.gov/region07/air/title5/t5memos/ptememo.pdf.*

[14] Section 110(l) of the Act provides that a SIP revision must not ''interfere with any applicable requirement concerning attainment or reasonable further progress * * *, or any other applicable requirement of this Act.''

[15] Here we state ''[e]ver since our current NSR Regulations were adopted in 1980, we have taken the position that States may meet the requirements of part 51 'with different but equivalent regulations,' 45 FR 52676.''

being enforceable as a practical matter.[16] In its letter TCEQ acknowledges that a practically enforceable permit includes conditions which establish clear legal obligations and allow compliance with these obligations to be verified. TCEQ further acknowledges that EPA's final PAL rules discuss the PAL monitoring, recordkeeping, and reporting requirements and characterizes these requirements as addressing a number of issues associated with the practical enforceability of PALs. TCEQ discussed how its PAL program meets the requirements for practical enforceability in each of the three elements identified in the 2002 NSR Reform Rule at 67 FR 80186, at 80190–80191 as follows:

• *A technically accurate limitation and the portions of the source subject to the limitation.* Texas established its PAL Program based on 30 TAC 116.180, 116.182, and 116.186(a). These rules satisfy the requirements of 40 CFR 51.165(f)(3)(i), (f)(4)(i)(A) and (E), and (f)(6)(1) and 40 CFR 51.166(w)(3)(i), (w)(4)(i)(*a*) and (*e*), and (w)(6)(1). These rules meet the Federal requirements for establishing a technically accurate limitation for a PAL and identifies that all emissions units at the major stationary source that will be subject to the PAL. This ensures that the TCEQ's PAL meets this requirement for practical enforceability.

• *The time period for the limitation (hourly, monthly, and annual limits such as rolling annual limits).* Texas' rules state that the PAL limit must be met on a 12-month rolling average (30 TAC 116.182(3) and 116.186(a)). These rules meet the Federal requirements at 40 CFR 51.165(f)(4)(i)(A) & (E) and 51.166(w)(4)(i)(*a*) and (*e*) and therefore ensure that the PAL Program and PAL permits issued under the program meet this requirement for practically enforceable.

• *The method to determine compliance, including appropriate monitoring, recordkeeping, and reporting.* Texas' rules at 30 TAC 116.186 include detailed monitoring, recordkeeping, and reporting that is consistent with the Federal PAL requirements. These monitoring, recordkeeping, and reporting provisions also meet this requirement for practical enforceability. Specific requirements are at 30 TAC 116.186(b)(4) and (8), and (c) which meet the Federal requirements at 40 CFR 51.165(f)(13)–(14) and 51.166(w)(13) (14). These monitoring, recordkeeping, and reporting provisions meet Federal PAL requirements and ensure that the program and PAL permits meets this requirement for practically enforceable.

The May 3, 2012, letter is included in the docket for this proposed rule. Accordingly, EPA is proposing to approve 30 TAC 116.12(22) submitted March 11, 2011–2, and 30 TAC 116.186(a) as submitted March 11, 2011–2, consistent with the demonstration included in the May 3, 2012, letter.

3. Submittal of 30 TAC 116.186(c)(2) Does Not Specifically Provide That Monitoring Data Must Meet Minimum Legal Requirements for Admissibility in a Judicial Proceeding To Enforce the PAL

a. Background

On February 1, 2006, TCEQ submitted 30 TAC 116.186(c)(1) which provided that the PAL monitoring system must accurately determine all emissions of the PAL pollutant in terms of mass per unit of time. It further provided that any such monitoring system must be based upon sound science and it must meet generally accepted scientific procedures for data quality and manipulation. Finally, this rule provided that the information generated by such monitoring system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL Permit. As submitted, this provision met the Federal requirements of 40 CFR 51.165(f)(12)(i) and 51.166(w)(12)(i).

On March 11, 2011–2, the TCEQ resubmitted this rule, now designated as 30 TAC 116.186(c)(2), and which included a revision which removed the requirement that the information generated by such monitoring system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL Permit. EPA considers the admissibility of monitoring data critical to a State's ability to enforce a regulatory requirement, including a PAL Permit requirement.

b. What is EPA's evaluation of the submitted SIP revision of 30 TAC 116.186(c)(2)?

On May 3, 2012, the TCEQ forwarded a letter to EPA which includes a written demonstration consistent with EPA's implementation of section 110(l) of the CAA; and the discussion at 67 FR 80186, at 80341 (December 31, 2002); on how the data from a monitoring system meets the minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL Permit.[17] In its letter TCEQ referred to its statutes and rules which establish the jurisdiction of the TCEQ, as well as permit conditions, which require owners and operators of facilities that may emit air contaminants which are authorized for construction and operation to maintain data necessary to demonstrate compliance with the terms and conditions of their authorizations. That authority is found in Tex. Health & Safety Code Sections 382.011, 382.012, 382.014, 382.016, 382.051, 382.0513, 382.0514, and 382.0515; Tex. Water Code sections 5.013(a)(11), 7.179, 7.180, and 7.181; and TCEQ rules 30 TAC 116.111, 116.115 (which are, for the most part, SIP approved). Additionally, the Texas Legislature has provided the TCEQ with the enforcement authority in Tex. Water Code Chapter 7 to initiate an action to enforce the statutes within the jurisdiction of the TCEQ, such as 30 TAC 7.179, 7.180, and 7.181.

The TCEQ adopted the requirement that the Texas Rules of Evidence, as applied in nonjury civil cases in the district courts of the State, be followed in all hearings. See 30 TAC 80.127. The initial factor affecting admissibility is relevance, and the relevance of offered evidence—evidence of non-compliance in an enforcement hearing—will support admissibility. However, if the data is not sufficient to support admissibility, or is non-existent, then the Executive Director of TCEQ may pursue an enforcement action for failing to maintain the data necessary to demonstrate compliance.

The May 3, 2012, letter is included in the docket for this proposed rule. Accordingly, EPA is proposing to approve 30 TAC 116.186(c)(2) submitted March 11, 2011–2, consistent with the demonstration included in the May 3, 2012, letter.

[16] The federal rules at 40 CFR 51.165(f)(2)(v), 51.165(f)(4)(i)(A), 51.166(w)(2)(v), and 51.166(w)(4)(i)(a) rules provide that the PAL must be enforceable as a practical matter. The omission of this requirement raises the question of how the rules meet federal enforceability requirements and is critical to the enforceability of a PAL. Accordingly, if the plan lacks such requirement, there must be a demonstration how the State has ensured that the PAL is enforceable as a practical matter or that the State otherwise has the ability to enforce the PAL in the absence of practical enforceability.

[17] The federal rules at 40 CFR 51.165(f)(12)(i) and 51.166(w)(12)(i) include requirements relating to the information generated by a PAL monitoring system. Among the requirements is that the information generated by such monitoring system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL Permit. EPA considers the admissibility of monitoring data critical to a State's ability to enforce a regulatory requirement, including a PAL Permit requirement. Accordingly, if the plan lacks such requirement, there must be a demonstration that the State has the ability to enforce the PAL based upon the information generated by the monitoring system.

4. Submittal of 30 TAC 116.186(a)

a. Background

On March 11, 2011–2, TCEQ submitted 30 TAC 116.186(a). This rule provides that the PAL limit will be enforced on a 12-month rolling average. However, this rule does not clearly specify that for compliance purposes, the emission calculations must include emissions from startups, shutdowns, and malfunctions, as required by 40 CFR 51.165(f)(7)(iv) and 51.166(w)(7)(iv).

b. What is EPA's evaluation of the submitted SIP revision of 30 TAC 116.186(a)?

On May 3, 2012, the TCEQ forwarded a letter to EPA which included a written demonstration consistent with EPA's implementation of 40 CFR 51.165(a)(1) and 51.166(b); section 110(l) of the CAA; and the discussion at 67 FR 80186, at 80341 (December 31, 2002); on how TCEQ addresses emissions from startups, shutdowns, and malfunctions, in the enforcement of its PAL Permits.[18] In this letter, the TCEQ states that a PAL permit limit can be generally enforced like any other permit limit, and the TCEQ has authority to enforce all permit requirements. This authority is found in Tex. Water Code, Chapter 7, and Tex. Health & Safety Code sections 382.011, 382.015, 382.016, 382.0515, 382.0516, 382.022, 382.023, and 382.085, as well as in certain rules found in 30 TAC Chapter 101, Subchapters A and F. In addition, TCEQ rule 30 TAC 101.201 requires regulated entities, regardless of whether they have a PAL permit, to record (and in some cases report) emissions events, which includes unscheduled maintenance, startup, and shutdown (MSS) activity emissions. Emissions from malfunctions are unauthorized emissions as defined in 30 TAC 101.1(107); therefore, they are unauthorized (non-compliant) emissions. Exceedances of a PAL limit, such as emissions from malfunctions, are unauthorized emissions and are subject to enforcement. TCEQ represented to EPA Region 6 that unscheduled MSS activity emissions are functionally equivalent to EPA's definition of malfunction.[19]

Furthermore, Texas' PAL also requires semiannual reports which include ''the *total* annual emissions (in tons per year) based upon a 12-month rolling total for each month in the reporting period.'' See 30 TAC 116.186(b)(4)(C)(ii). Emphasis added. This requires reporting of all emissions from the PAL, including authorized and unauthorized emissions.

The May 3, 2012, letter is included in the docket for this proposed rule. Accordingly, EPA is proposing to approve 30 TAC 116.186(a) as submitted March 11, 2011–2 consistent with the demonstration included in the May 3, 2012, letter.

V. What action is EPA proposing to take on the non-PAL aspects of the major NSR SIP requirements?

A. Background

On September 15, 2010, EPA disapproved these provisions for the reasons described below.

B. EPA Evaluation of the Grounds for Disapproval and Texas' Revisions To Address These Grounds

1. The March 11, 2011–1 Submitted Rule Did Not Explicitly Limit the Definition of ''Facility'' to an Emissions Unit

a. What were the grounds for the September 15, 2010, disapproval?

The NNSR non-PAL rules at 30 TAC 116.150 and 116.151, submitted February 1, 2006,[20] did not explicitly limit the definition of ''facility''[21] to an ''emissions unit'' as do the submitted PAL rules and approved PSD non-PAL rules. It is our understanding of State law that a ''facility'' can be an ''emissions unit,'' i.e., any part of a stationary source that emits or may have the potential to emit any air contaminant, as the State explicitly provides in the revised PSD rule at 30 TAC 116.160(c)(3). A ''facility'' also can be a piece of equipment, which is smaller than an ''emissions unit.'' A ''facility'' can include more than one ''major stationary source.'' It can include every emissions point on a company site, without limiting these emissions points to only those belonging to the same industrial grouping (SIC code). Regardless, the State clearly thought the prudent legal course was to limit ''facility'' explicitly to ''emissions unit'' in its PSD SIP non-PALs rules. TCEQ did not submit a demonstration showing how the lack of this explicit limitation in the non-PALs NNSR SIP revision is at least as stringent as the revised Major NSR SIP requirements. Therefore, EPA disapproved the submitted non-PAL NNSR rules and its use as not meeting the revised Major NNSR non-PALs SIP requirements. See 75 FR 56424, at 56438, 56439–56440, and 56443.

b. What did Texas submit to address the grounds for disapproval?

In its SIP revisions submitted March 11, 2011–1 and March 11, 2011–2, Texas did not address these grounds relating to the use of the term ''facility'' for ''emissions unit'' in its non-PAL aspects of the Major Source SIP requirements for NNSR. In the March 11, 2011–1, submittal, the revisions to 30 TAC 116.150 only relate to the antibacksliding Major NSR SIP requirements for the one-hour ozone NAAQS, and the Major Nonattainment NSR SIP requirements for the 1997 eight-hour ozone NAAQS.[22] In the March 11, 2011–2 submittal, Texas only discussed the use of ''facility'' for the term ''emissions unit'' in relation to its changes to its PAL rules at 30 TAC 116.180, 116.182, 116.186, and 116.190. In each of these PAL rules, TCEQ states that the Federal term ''emissions unit'' is defined very similarly to the term ''facility'' as defined in the TCCA. In these PAL rules, the TCEQ added the language ''or emissions unit'' whenever the term ''facility'' is used.[23]

In the State's February 22, 2012, proposed rulemaking parallel reviewed by EPA for this proposal action, TCEQ proposed revisions to 30 TAC 116.150 and 116.151. To ensure clarity, TCEQ proposed to add the language ''or emissions unit'' where the terms ''facility'' or ''facilities'' are used. The TCEQ proposed this change in 30 TAC 116.150(a), (d)(1), and (d)(3) and in 30 TAC 116.151(a), (c)(1), and (c)(3), and requested parallel processing of these proposed revisions.

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

As discussed above, the submittals dated March 11, 2011–1 and March 11, 2011–2, did not address how TCEQ limits the definition of ''facility'' to an ''emission unit'' in the Non-PAL

[18] The federal rules at 40 CFR 51.165(f)(7)(iv) and 51.166(w)(7)(iv) require that for purposes of enforcement of a PAL, the emission calculations must include emissions from startups, shutdowns, and malfunctions. The inclusion of these emissions is critical to the enforcement of the PAL. Accordingly, if the plan lacks such requirement, there must be a demonstration that the State has the ability to enforce the PAL.

[19] Letter from John Steib, Deputy Director, TCEQ Office of Compliance & Enforcement to John Blevins, Director, Compliance Assurance and Enforcement Division, USEPA, Region-6 Dallas, April 17, 2007.

[20] The February 1, 2006, submittal was resubmitted March 11, 2011–1.

[21] ''Facility'' is defined in the SIP approved 30 TAC 116.10(6) as ''a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment.''

[22] These requirements are addressed in sections III and IV of this preamble.

[23] See section IV.B.4 of this preamble for further discussion on how TCEQ addressed the use of ''facility'' for ''emissions unit'' in its PAL Program.

Aspects of the Major NSR SIP Requirements in 30 TAC 116.150 and 116.151. The TCEQ did not submit a demonstration in these submittals showing how the lack of this explicit limitation in the NNSR SIP non-PALs revision is at least as stringent as the revised Major NSR SIP requirements.

However, the State's proposed February 22, 2012, rulemaking parallel reviewed by EPA for this proposal action, addresses the use of the term ''facility'' for ''emissions unit'' as used in 30 TAC 116.150 and 116.151.

The revisions submitted March 11, 2011–1 for non-PAL NNSR include 30 TAC 116.150, New Major Source or Major Modification in Ozone Nonattainment Area, and 30 TAC 116.151, New Major Source or Major Modification in Ozone Nonattainment Area. In these sections, TCEQ uses the term ''facility'' in 30 TAC 116.150(a), (d)(1) and (d)(3) and in 30 TAC 116.151(a), (c)(1), and (c)(3). In the State's February 22, 2012, proposed rulemaking, TCEQ proposed to revise these paragraphs to add the language ''or emissions unit'' following each use of ''facility'' to ensure clarity and consistency with Federal requirements. The TCEQ stated that the Federal term ''emissions unit'' as defined in Federal rules is similar to the term ''facility'' as defined in the Texas Clean Air Act. The TCEQ addressed this matter in the following statements:

> A facility may constitute or contain a stationary source—a point of origin of a contaminant, as defined in THSC, § 382.003(12) and in § 116.10(15), a definition that is approved into the Texas SIP. As a discrete point, a facility can constitute but cannot contain a ''major stationary source'' as defined by federal law and in the TCEQ's SIP approved rule § 116.12(17). A facility is subject to major and minor NSR requirements, depending on the facts of the specific application.

See the TCEQ February 22, 2012, proposal, page 3. TCEQ further stated:

> The TCEQ and its predecessor agencies have consistently interpreted facility to preclude inclusion of more than one stationary source, in contrast to EPA's stated understanding. Likewise, TCEQ does not interpret facility to include ''every emissions point on a company site, even if limiting these emission points to only those belonging to the same industrial grouping (SIC code).'' The federal definition of ''major stationary source'' in 40 Code of Federal Regulations (CFR) 51.166(b)(1)(i)(a) is not equivalent to the state definition of ''source.'' A ''major stationary source'' can include more than one ''facility'' as defined under Texas law, which is consistent with EPA's interpretation of a ''major stationary source'' including more than one emissions unit.
>
> Under major NSR, EPA uses the term ''emissions unit'' (generally) when referring to part of a ''stationary source;'' TCEQ translates ''emissions unit'' to mean ''facility.'' The commission's SIP-approved Prevention of Significant Deterioration (PSD) permitting rule in § 116.160(c)(3) states, ''{t}he term 'facility' shall replace the words 'emissions unit' in the referenced sections of the CFR.''
>
> The above interpretation of the term ''facility'' has been consistently applied by the TCEQ and its predecessor agencies for more than 30 years. The TCEQ's interpretation of Texas statutes enacted by the Texas Legislature is addressed by the Texas Code Construction Act. More specifically, words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly, as per Texas Government Code, § 311.011(b).
>
> In response to the proposed disapproval, the commission proposed adding the phrase ''or emissions unit'' in its PAL rules, but did not do so in the nonattainment permitting rules because of the long term use of the term in the Texas permitting rules and the approved Texas SIP, which included earlier versions of these rules, and because in the intervening time EPA had approved the definition of ''facility'' into the SIP.
>
> The proposed changes to § 116.150 and § 116.151 would allow EPA to approve the updated rules that implement the federal nonattainment permitting program.

See the TCEQ February 22, 2012, proposal, pages 4 through 7.

As discussed above, the TCEQ in its February 22, 2012, proposed rulemaking parallel reviewed by EPA for this proposal action, provides a demonstration that for the purposes of 30 TAC 116.150 and 116.151, the use of the term ''facility'' is the same as the use of the term ''emissions unit.'' The changes proposed for 30 TAC 116.150 and 116.151 are the same changes adopted in the TCEQ's PAL Program, submitted March 11, 2011–2, to address that ''emissions unit'' means ''facility.'' The proposed changes are also consistent with the approved Texas PSD Program at 30 TAC 116.160(c)(3) which states ''{t}he term 'facility' shall replace the words 'emissions unit' '' in the referenced sections of the CFR. Accordingly, EPA is proposing to approve the revisions to 30 TAC 116.150 and 116.151 submitted March 11, 2011–1 and the revisions proposed on February 22, 2012.

2. The Definition of ''Baseline Actual Emissions'' Submitted March 11, 2011–2, to 30 TAC 116.12(3)(E) Did Not Require the Inclusion of Emissions Resulting From Startups, Shutdowns, and Malfunctions, as Required Under Federal Regulations

EPA disapproved the definition of ''baseline emissions'' as submitted February 1, 2006, in 30 TAC 116.12(3)(E) because it does not require the inclusion of emissions resulting from startups, shutdowns, and malfunctions, as required under Federal regulations.

a. What were the grounds for the September 15, 2010, disapproval?

Under the Major NSR SIP requirements, for any physical or operational change at a major stationary source, a source must include emissions resulting from startups, shutdowns, and malfunctions, in its determination of baseline actual emissions (40 CFR 51.165(a)(1)(xxxv)(A)(1) and (B)(1) and 51.166(b)(47)(i)(*a*) and (ii)(*a*)) and projected actual emissions (40 CFR 51.165(a)(1)(xxviii)(B) and 51.166(b)(40)(ii)(*b*)). The definition of the term ''baseline actual emissions,'' as submitted February 1, 2006, in 30 TAC 116.12(3)(E), did not require the inclusion of emissions resulting from startups, shutdowns, and malfunctions.[24] Our understanding of State law is that the use of the term ''may'' creates discretionary authority or grants permission or a power. *See* Section 311.016 of the Texas Code Construction Act. Similarly, the submitted definition of ''projected actual emissions'' at 30 TAC 116.12(29) does not require that emissions resulting from startups, shutdowns, and malfunctions be included. These submitted definitions differed from the Federal SIP definitions and the State had not provided information demonstrating that these definitions are at least as stringent as the Federal SIP definitions. Therefore, based upon the lack of a demonstration from the State, EPA disapproved the definitions of ''baseline actual emissions'' at 30 TAC 116.12(3) and ''projected actual emissions'' at 30 TAC 116.12(29) as not meeting the revised Major NSR SIP requirements. Specifically, the State had not provided:

- A replicable procedure for determining the basis for which emissions associated with maintenance, startup, and shutdown (MSS) will and will not be included in the baseline actual emissions;
- The basis for including emissions associated with maintenance in baseline actual emissions;
- The basis for not including MSS emissions, in the projected actual emissions; and

[24] The definition of ''baseline actual emissions,'' in 30 TAC 116.12(3)(E) submitted February 1, 2006, provided: ''* * * Until March 1, 2016, emissions previously demonstrated as emissions events or historically exempted under Chapter 101 of this title * * * *may* be included to the extent they have been authorized, or are being authorized, in a permit action under Chapter 116. 30 TAC 116.12(3)(E).'' (Emphasis added.)

• Provisions for how it will handle MSS emissions after March 1, 2016.

Therefore, based upon the lack of a demonstration from the State, as is required for a customized Major NSR SIP revision submittal, EPA disapproved the definitions of ''baseline actual emissions'' at 30 TAC 116.12(3) and ''projected actual emissions'' at 30 TAC 116.12(29) as not meeting the revised Major NSR SIP requirements.

Texas stated that it had excluded emissions associated with malfunctions from the calculation of baseline actual emissions and projected actual emissions because including such emissions would inflate the baseline and would narrow the gap between baseline actual emissions and projected actual emissions. EPA agrees with the reasons Texas uses to exclude malfunction emissions from baseline actual emissions and projected actual emissions and which are comparable to the reasons EPA used for excluding malfunction emissions from other States in which EPA approved such exclusion. Notwithstanding Texas' exclusion of malfunctions from these definitions, Texas must address the other grounds for disapproval as discussed above. This includes mandating the exclusion of malfunction emissions in both definitions. See 75 FR 56424, at 56438–56439 and 56443.

b. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–2, TCEQ submitted revisions to address this concern. TCEQ removed the term ''exempted'' from 30 TAC 116.12(3)(E) and replaced it with ''unauthorized'' since emissions events were not exempt under 30 TAC Chapter 101, General Air Quality Rules, and must be reported.[25] TCEQ noted that in EPA's final disapproval of the definition of baseline actual emissions, EPA agreed that the inclusion of emission events [26] in the definition of baseline actual emissions would have the effect of inflating the baseline and narrowing that gap between the baseline actual emissions and the planned emission rate. See 75 FR 56424, at 56443. EPA noted that the definition of baseline actual emissions included emission events and stated that to be approvable the definition must exclude emission events. This is because EPA noted that the definitions of ''baseline actual emissions'' and ''projected actual emissions'' must both exclude or include malfunction emissions. The TCEQ stated that its long-standing policy is not to reward emissions from events which are upset events and unplanned MSS activities. TCEQ stated that the term ''unplanned MSS activities'' substitutes for EPA's term ''unscheduled MSS.'' TCEQ further stated that unplanned MSS activities are the functional equivalent of malfunctions, as are all upset emissions. TCEQ also noted that EPA objects to the use of the word ''may,'' because it indicates discretion without replicable procedures for such determinations.

Accordingly, TCEQ reworded 30 TAC 116.12(3)(E) to clarify that MSS emissions reported under Chapter 101 shall be included in the calculation of baseline actual emissions but *only to the extent that they have been authorized or are being authorized.* Because *unauthorized* emissions are not included, they are therefore *excluded* in the calculation of baseline actual emissions. The TCEQ *does not authorize emission events,* which are emissions from upsets and unscheduled MSS activities. While the text, as adopted in 2006, implemented that long standing policy, it was not written to clearly limit the *inclusion of only planned MSS emissions that have been authorized or in the process of being authorized during a defined time period.* These changes ensure:

• That there is no discretion as to inclusion of only certain planned MSS emissions (and consequently the exclusion of emission events) in the baseline actual emissions calculation, and

• That the definitions of ''baseline actual emissions'' and ''projected actual emissions'' are comparable and are therefore approvable.

Additionally, the TCEQ made changes from its proposal by retaining in 30 TAC 116.12(3)(E) the phrase ''or are being authorized,'' relating to planned MSS emissions. Further, 30 TAC 116.12(3)(D) provides that *non-compliant emissions are excluded* from baseline actual emissions. To the extent that there are planned MSS emissions that remain unauthorized on or after March 1, 2016, those will necessarily be ''non-compliant'' and therefore, no longer included in the determination of baseline actual emissions under the requirements of subparagraph (D). This is consistent with the Commission's policy regarding authorization of planned MSS emissions.

Additionally, the TCEQ amended the definition of ''projected actual emissions'' in 30 TAC 116.12(29). The Commission is replacing the phrase ''unauthorized emissions from startup and shutdown activities'' with ''emissions from planned maintenance, startup, or shutdown activities, which were historically unauthorized and subject to reporting under Chapter 101 to the extent that *they have been authorized or are being authorized.''* Emphasis added. This change is necessary to ensure that this definition is compatible with the definition of ''baseline actual emissions.'' As discussed earlier, the definition of ''baseline actual emissions'' is being amended to ensure TCEQ's intent of the types of emissions that can be included in the calculation is clear. While the TCEQ intended that these two definitions be compatible when adopted in 2006, the EPA's comments indicated that this may not be the case. The EPA commented that the term ''projected actual emissions'' does not include emissions from startups, shutdowns, and malfunctions. However, as stated in the original adoption preamble for this rule in 2006, the TCEQ excluded malfunction emissions in compliance with long-standing Commission policy to exclude noncompliant emissions. The EPA in its final disapproval (see September 15, 2010 (75 FR 56424)) agreed that the inclusion of emissions events, which are similar to the Federal term ''malfunctions'' in the definition of ''baseline actual emissions'' would be inappropriate. Further, EPA has approved definitions in other states that also exclude malfunctions. (See September 15, 2010 (75 FR 56441)). These amendments are necessary to ensure that both definitions are approvable as revisions to the SIP.

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

Texas submitted revisions on March 11, 2011–2, that address each of the items that EPA identified as needing to be addressed. Texas addressed these items as follows:

• *A replicable procedure for determining the basis for which emissions associated with MSS will, and will not, be included in the baseline actual emissions.*

TCEQ stated that its long-standing policy is not to reward emissions from emission events, which are upset events and unplanned MSS activities. TCEQ's term ''unplanned MSS activities'' substitutes for EPA's term ''unscheduled MSS.'' Unplanned MSS activities are

[25] These requirements are in the SIP at 30 TAC Chapter 101, Subchapter F, and approved November 10, 2010 (75 FR 68989).

[26] The current SIP-approved definition of ''emission event'' approved November 10, 2010 (75 FR 68989), at 30 TAC 101.1(28) states: ''Emissions event—Any upset event or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in unauthorized emissions of air contaminants from one or more emissions points at a regulated entity.''

the functional equivalent of malfunctions, as are all upset emissions.

EPA also objected to the use of the word ''may'' stating that it indicates discretion without replicable procedures for such determinations. The submitted revision no longer uses the word ''may.''

TCEQ addressed through its revisions to 30 TAC 116.12(3)(E) to clarify that MSS emissions reported under Chapter 101 shall be included in the calculation of baseline actual emissions but only to the extent that they have been authorized, or are being authorized. Unauthorized emissions are not included and are therefore excluded in the calculation of baseline actual emissions. TCEQ stated that it does not authorize emission events, which are emissions from upsets and unscheduled MSS activities.

Consequently, TCEQ reworded 30 TAC 116.12(3)(E) to clarify that MSS emission reported under Chapter 101 shall be included in the calculation of baseline actual emissions but only to the extent that they have been authorized or are being authorized. Because unauthorized emissions are not included, they are therefore excluded in the calculation of baseline actual emissions. The TCEQ does not authorize emission events, which are emissions from upsets and unscheduled MSS activities. These changes ensure:

—That there is no discretion as to inclusion of only certain planned MSS emission (and consequently the exclusion of emission events) in the baseline actual emissions calculation, and

—That the definitions of ''baseline actual emissions'' and ''projected actual emissions'' are comparable and are therefore approvable.

• *The basis for including emissions associated with maintenance in baseline actual emissions.*

The TCEQ includes MSS emissions to the extent that they have been authorized or are being authorized. The MSS includes authorized emission from maintenance. The bases for including authorized MSS emissions (which include authorized emissions from maintenance) are discussed above in section V.B.2.b. As discussed above, unauthorized emissions, including unauthorized emissions from maintenance activities, are not included in the calculation of the baseline actual emissions. TCEQ does not authorize emission events which are emissions from upsets and unscheduled MSS activities (including maintenance).

• *The basis for not including unauthorized MSS emissions in the projected actual emissions.*

TCEQ described its adopted changes to the definition of ''projected actual emissions'' in 30 TAC 116.12(29) as a replacement of the phrase ''unauthorized emissions from startup and shutdown activities'' with ''unauthorized emissions from startup and shutdown activities which were historically unauthorized and subject to reporting under Chapter 101 to the extent that they have been authorized or are being authorized.'' This change ensures that this definition is compatible with the definition of ''baseline actual emissions.'' The TCEQ excluded malfunction emissions consistent with its long-standing policy to exclude non-compliant emissions, as discussed above in section V.B.2.b of this preamble.

• *Provisions for how it will handle maintenance, startup, and shutdown emissions after March 1, 2016.*

Under 30 TAC 116.12(3)(D), TCEQ excludes non-compliant emissions from the baseline actual emissions. To the extent that these emissions are planned MSS emissions that remain *after* March 1, 2016, those emissions are necessarily ''non-compliant'' and will be excluded from the calculation of the baseline actual emissions under subparagraph (D).

In summary, the TCEQ has addressed the grounds for disapproval, as discussed above, and demonstrated that the submitted revisions meet the following Federal requirements:

• Inclusion of planned MSS activities to the extent they have been authorized, or are being authorized, in the calculation of baseline actual emissions. These revisions meet the requirements of 40 CFR 51.165(a)(1)(xxxv)(A)(1) and (B)(1) and 40 CFR 51.166(b)(40)(ii)(a) and (b)(47)(i)(a) and (ii)(a); and

• Inclusion of planned MSS activities to the extent they have been authorized, or are being authorized, in the calculation of projected actual emissions. These revisions meet the requirements of 40 CFR 51.165(a)(1)(xxviii)(B)(2); and 40 CFR 51.166(b)(40)(ii)(b).

These revisions therefore satisfy the requirements for SIP approval. Accordingly, EPA is proposing to approve the revisions to the definitions of ''baseline actual emissions'' and ''projected actual emissions'' in 30 TAC 116.12(3) and (29) submitted March 11, 2011–2.

3. The Submitted Definition ''Baseline Actual Emissions'' Does Not Provide That the Emissions Must Be Calculated in Terms of the Average Rate, in Tons per Year

a. What were the grounds for the September 15, 2010, disapproval?

The Federal definition of the ''baseline actual emissions'' provides that these emissions must be calculated in terms of ''the average rate, in tons per year at which the unit actually emitted the pollutant during any consecutive 24-month period.'' The submitted definition of the term ''baseline actual emissions'' found at 30 TAC 116.12(3)(A), (B), (D), and (E) differed from the Federal definition by leaving out the word ''average'' and instead providing that the baseline shall be calculated as ''the rate, in tons per year at which the unit actually emitted the pollutant during any consecutive 24-month period.'' Texas did not provide any demonstration, as required for a customized major NSR SIP revision submittal, showing how this different definition is at least as stringent as the Federal definition. See 75 FR 56424, at 56439, and 56443.

b. What did Texas submit to address the grounds for disapproval?

On March 11, 2011–2 the TCEQ submitted revisions to the definition of ''baseline actual emissions'' in 30 TAC 116.12(3)(A), (B), (D), and (E), that specify that the rate is an average rate.

c. What is EPA's evaluation of the submitted SIP revision to address the grounds for disapproval?

A submitted change to the definition of ''baseline actual emissions'' in 30 TAC 116.12(3)(A), (B), (D), and (E), is to specify that the rate is an average rate. The revised definition meets the Federal requirements under 40 CFR 51.165(a)(1)(xxxv)(A), (B), (D) and (E) and 51.166(b)(47)(i), (ii), (iv), and (v). These revisions satisfy the requirements for SIP approval. Accordingly, EPA is proposing to approve the revisions to the definition of ''baseline actual emissions'' in 30 TAC 116.12 submitted March 11, 2011–2.[27]

VI. Does approval of Texas' rule revisions interfere with attainment, reasonable further progress, or any other applicable requirement of the act?

The Act provides in section 110(l) that:

Each revision to an implementation plan submitted by a State under this Act shall be

[27] A similar issue in the PAL Program is addressed in section IV.B.5 of this preamble.

adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revisions would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of the Act.

EPA's November 2002 rulemaking for NSR Reform Rules included the ''Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules'' which demonstrated the 2002 NSR Reform Rules were compliant with this requirement.[28]

In EPA's Notice of Reconsideration of the final December 31, 2002, NSR Reform rule we stated:

During the rulemaking process, we strived to take into consideration relevant and reliable information on environmental effects. We did in fact take account of environmental considerations in formulating the final rules, and believe the final rules are properly supported and justified in this regard.

See 68 FR 44620, at 44624 (July 30, 2003). We further stated:

In the supplemental environmental analysis, we found that the overall effect of the final rule would be a net benefit to the environment compared to the former NSR rules because the final rule would result in reductions in emissions of air pollution. We found that four of the five provisions in the final rule would result in environmental benefits, and the other provision would have no significant effect. Specifically, for each of the rule's five provisions, the analysis concludes the following:

(1) The PAL provisions will result in tens of thousands of tons per year (tpy) of volatile organic compounds (VOC) reductions from just three industrial categories where PALs are likely to be used most often. Overall reductions will be greater because it is likely that PALs also will be adopted in other source categories.

* * * * *

(4) The portion of the rule addressing baseline actual emissions will not have a significant environmental impact. The former program already allowed sources to use a more representative baseline period, with the approval of the reviewing authority, instead of the two-year period before the change specifically delineated in the former rules. The final rules provide an expanded time frame from which you may select a representative baseline but eliminate the option of going beyond this period of time. While the new rules may allow a small number of existing emissions units to use higher baselines, other units will be required to use lower baselines due to the requirement to adjust the baseline downward to account for any new emission limitations at that emissions unit. The changes' overall impact will be small because the portion of the rule addressing baseline actual emissions does not affect new sources, new units built at existing sources, electric utilities, and many modified sources.

(5) The change to the actual-to-projected-actual test will have a net environmental benefit, but a relatively small one. The benefit stems from removing: (1) Incentives to keep actual emissions high before making a change, and (2) barriers to projects that will reduce emissions. The size of this benefit nationally is uncertain. Its impact would be small because the change in emissions calculation methodology does not affect either of the following: (1) New sources, new units built at existing industrial facilities, and electric utilities, or (2) any modifications at existing facilities that actually result in significant increases in emissions. Historically, under the previous major NSR rule, virtually all other sources making a physical or operational change have accepted ''permit limits'' so as to be confident that they will not trigger major NSR. Our analysis concludes that the benefits from this aspect of the program are likewise largely unaffected because such sources must still assure that actual emissions do not significantly increase as a result of a change.

The supplemental environmental analysis uses quantitative information where possible but also notes limitations on our ability to quantify impacts of the rule. We used qualitative information to supplement the analysis when such limitations are present. We also noted that the final rules will result in economic benefits that stem from improved flexibility, increased certainty, and reduced administrative burden. These benefits are important, but were not quantified as part of this environmental analysis.

See 68 FR 44624–44625 (July 30, 2003). In the final reconsideration action, we stated:

After carefully considering the information that was submitted, we have determined that none of the new information presented leads us to conclude that the analysis was incorrect or substantially flawed. Therefore, we are re-affirming the validity of the original conclusions. A summary of the comments received and our responses to these comments can be found in our Technical Support Document.

See 68 FR 63021, at 63023 (November 7, 2003). The Technical Support Document for the reconsideration is available at *http://www.epa.gov/air/nsr/documents/petitionresponses10-30-03.pdf.*

In this instance Texas has adopted new rules that are at least as stringent as the applicable Federal rules and correspond with the 2002 Final NSR Improvement Rules. There are no data currently available that would show that implementation of Texas' NSR Reform Program would result in interference with any applicable requirement concerning attainment or reasonable further progress or any other applicable requirement of the Act. We anticipate that Texas' NSR Reform Program will be have the same impact as the Federal PAL rules as described in the 2002 Supplemental Analysis and the 2003 reconsideration.

The Texas PAL will result in lower emissions than the allowable emissions on the face of the permit in effect before issuance to the PAL Permit. This is because the PAL Permit is based upon actual emissions which will generally be less than the emissions allowed in the permit in effect prior to issuance of the PAL permit. The PAL is established as the sum of the baseline actual emissions from all emissions units at the major stationary source plus the significant level for the PAL pollutant, See 30 TAC 116.188. Furthermore, the average emissions for each emissions unit must be adjusted downward to exclude any non-compliant emissions during the consecutive 24-month baseline period that is used to establish the baseline actual emissions for the PAL. See 30 TAC 116.12(3)(D) under the definition of ''baseline actual emissions.'' As discussed in section IV.B.1 in this preamble, a PAL can only be established at an existing major stationary source which has had at least two years of operating history to establish an actuals PAL. Consequently, the PAL will generally be established at a level that is lower than the allowable emissions established in the pre-existing permit. Finally, in the 2002 NSR Reform rulemaking, we note that a PAL provides operational flexibility for an owner or operator to manage source-wide emissions without triggering major NSR when the changes do not result in emissions above the PAL. This creates incentive for an owner or operator to create room for growth by employing innovative control technologies and pollution control measures to create emissions reductions to facilitate economic expansion. See 67 FR 80186, at 80206–80207 (December 31, 2002).

For the reasons stated above, we are proposing to find that the submitted SIP revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

VII. Proposed Action

Under section 110(k)(3) and parts C and D of the Act and for the reasons stated above, EPA proposes to approve the following revisions to the Texas SIP:

- Revisions to 30 TAC 116.12—Nonattainment and Prevention of Significant Deterioration Review Definitions—submitted June 10, 2005, and resubmitted March 11, 2011–1; February 1, 2006, and resubmitted

[28] This document is available at *http://www.epa.gov/air/nsr/documents/nsr-analysis.pdf.*

March 11, 2011–1; revisions submitted March 11, 2011–2; the revisions proposed February 22, 2012, for parallel processing; and the letter from TCEQ to EPA dated May 3, 2012, which clarifies TCEQ's interpretation of 30 TAC 116. 12.

• Revisions to 30 TAC 116.115—General and Special Conditions—submitted March 11, 2011–2.

• New 30 TAC 116.127—Actual to Projected Actual and Emission Exclusion Test for Emissions—submitted February 1, 2006 (as 30 TAC 116.121) and resubmitted March 11, 2011–2 (as redesignated to 30 TAC 116.127).

• Revisions to 30 TAC 116.150—New Major Source or Major Modification in Ozone Nonattainment Area—submitted June 10, 2005, and resubmitted March 11, 2011–1; February 1, 2006, and resubmitted March 11, 2011–1; revisions submitted March 11, 2011–1; and the revisions proposed February 22, 2012, for parallel processing.

• Revisions to 30 TAC 116.151—New Major Source or Major Modification in Nonattainment Areas Other Than Ozone—submitted February 1, 2006, and resubmitted March 11, 2011–2 (without further revision); and the revisions proposed February 22, 2012, for parallel processing.

• New 30 TAC 116.180—Applicability—submitted February 1, 2006, and resubmitted March 11, 2011–2; revisions submitted March 11, 2011–2; and the revisions proposed February 22, 2012, for parallel processing.

• New 30 TAC 116.182—Plant-Wide Applicability Permit—Submitted February 1, 2006, and resubmitted March 11, 2011–2; and revisions submitted March 11, 2011–2.

• New 30 TAC 116.184—Application Review Schedule—Submitted February 1, 2006, and resubmitted March 11, 2011–2 (without further revision).

• New 30 TAC 116.186—General and Specific Conditions—Submitted February 1, 2006, and resubmitted March 11, 2011–2; revisions submitted March 11, 2011–2; the revisions proposed February 22, 2012, for parallel processing; and the letter from TCEQ to EPA dated May 3, 2012, which clarifies TCEQ's interpretation of 30 TAC 116.12.

• New 30 TAC 116.188—Plant-Wide Applicability Limit—Submitted February 1, 2006, and resubmitted March 11, 2011–2; and revisions submitted March 11, 2011–2.

• New 30 TAC 116.190—Federal Nonattainment and Prevention of Significant Deterioration Review—Submitted February 1, 2006, and resubmitted March 11, 2011–2; and revisions submitted March 11, 2011–2.

• New 30 TAC 116.192—Amendments and Alterations—Submitted February 1, 2006, and resubmitted March 11, 2011–2; and revisions submitted March 11, 2011–2.

• New 30 TAC 116.196—Renewal of a Plant-Wide Applicability Limit Permit—Submitted February 1, 2006; and resubmitted March 11, 2011–2 (without further revision).

• New 30 TAC 116.198—Expiration or Voidance—Submitted February 1, 2006, and resubmitted March 11, 2011–2 (without further revision).

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this notice 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 proposed action:

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• 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 Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

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

Dated: June 7, 2012.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2012–15049 Filed 6–19–12; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2012–0028; FF09M21200–123–FXMB1231099BPP0L2]

RIN 1018–AY61

Migratory Bird Hunting; Application for Approval of Copper-Clad Iron Shot as Nontoxic for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application for nontoxic shot approval.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce that Environ-Metal, Inc., of Sweet Home, Oregon, has applied for our approval of shot composed of copper and iron as nontoxic for waterfowl hunting in the United States. The shot contains a maximum of 44.1 percent copper by weight, with iron composing the rest of the shot. We have initiated review of the shot under the criteria we have set out in our nontoxic shot approval procedures in our regulations.

DATES: This notice announces the initiation of our review of a Tier 1 application submitted in accordance with 50 CFR 20.134. We will complete