based on a 6 hour average. Particulate testing shall be performed annually as required by paragraph (e)(3) of this section. This test with 2 hour test runs may be substituted and used to demonstrate compliance with the particulate limits in paragraph (d)(2) of this section.

(2) Particulate Matter from units 4 and 5 shall be limited to 0.015 lb/MMbtu for each unit as measured by the average of 3 test runs with each run collecting a minimum of 60 dscf of sample gas and with a duration of at least 120 minutes. Sampling shall be performed according to 40 CFR Part 60 Appendices A–1 through A–3, Methods 1 through 4 and Method 5 or Method 5e. The averaging time for any other demonstration of the particulate matter compliance or exceedence shall be based on a 6 hour average.

(3) No owner or operator shall discharge or cause the discharge of emissions from the stacks of Units 1, 2, 3, 4 or 5 into the atmosphere exhibiting greater than 10% opacity, excluding uncombined water droplets, averaged over any six (6) minute period.

(4) Plantwide nitrogen oxide emission limits.

(i) The plantwide nitrogen oxide limit, expressed as nitrogen dioxide, shall be 0.11 lb/MMbtu as averaged over a rolling 30 calendar day period. NO_2 emissions for each calendar day shall be determined by summing the hourly emissions measured in pounds of NO_2 for all operating units. Heat input for each calendar day shall be determined by adding together all hourly heat inputs, in millions of BTU, for all operating units. Each day the thirty day rolling average shall be determined by adding together that day and the preceding 29 days pounds of NO_2 and dividing that total pounds of NO_2 by the sum of the heat input during the same 30 day period. The results shall be the 30 day rolling pound per million BTU emissions of NO_X.

(ii) The interim NO_X limit for each individual boiler with SCR control shall be as follows:

(A) Unit 1 shall meet a rolling 30 calendar day NO_X limit of 0.21 lb/MMBtu,

(B) Unit 2 shall meet a rolling 30 calendar day limit of 0.17 lb/MMBtu,

(C) Unit 3 shall meet a rolling 30 calendar day limit of 0.16 lb/MMBtu,

(D) Units 4 and 5 shall meet a rolling 30 calendar day limit of 0.11 lb/MMBtu, each.

(iii) Testing and monitoring shall use the 40 CFR part 75 monitors and meet the 40 CFR part 75 quality assurance requirements. In addition to these 40 CFR part 75 requirements, relative accuracy test audits shall be performed for both the NO_2 pounds per hour measurement and the heat input measurement. These shall have relative accuracies of less than 20%. This testing shall be evaluated each time the 40 CFR part 75 monitors undergo relative accuracy testing.

(iv) If a valid NO_X pounds per hour or heat input is not available for any hour for a unit, that heat input and NO_X pounds per hour shall not be used in the calculation of the 30 day plant wide rolling average.

(v) Upon the effective date of the plantwide NO_X average, the owner or operator shall have installed CEMS and COMS software that complies with the requirements of this section.

(j) Dust. Each owner or operator shall operate and maintain the existing dust suppression methods for controlling dust from the coal handling and ash handling and storage facilities. Within ninety (90) days after promulgation of this paragraph (j), the owner or operator shall develop a dust control plan and submit the plan to the Regional Administrator. The owner or operator shall comply with the plan once the plan is submitted to the Regional Administrator. The owner or operator shall amend the plan as requested or needed. The plan shall include a description of the dust suppression methods for controlling dust from the coal handling and storage facilities, ash handling, storage and landfilling, and road sweeping activities. Within 18 months of promulgation of this paragraph (j) each owner or operator shall not emit dust with opacity greater than 20 percent from any crusher, grinding mill, screening operation, belt conveyor, or truck loading or unloading operation.

[FR Doc. 2010–26262 Filed 10–18–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0031; FRL–9215–1]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Rules and Regulations for Control of Air Pollution; Permitting of Grandfathered and Electing Electric Generating Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to partially approve and partially disapprove revisions of the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ, or Commission) on January 3, 2000, and July 31, 2002, as supplemented on August 5, 2009. These revisions are to regulations of the TCEQ which relate to application and permitting procedures for grandfathered electric generating facilities (EGFs). The revisions address a mandate by the Texas Legislature under Senate Bill 7 to achieve nitrogen oxide (NO_X), sulfur dioxide (SO_2) and particulate matter (PM) emission reductions from grandfathered EGFs. These emissions reductions will contribute to achieving attainment and help ensure attainment and continued maintenance of the National Ambient Air Quality Standards (NAAQS) for ozone, sulfur dioxide, and particulate matter in the State of Texas. As a result of these mandated emissions reductions, in accordance with section 110(l) of the Federal Clean Air Act, as amended (the Act, or CAA), partial approval of these revisions will not interfere with attainment of the NAAQS, reasonable further progress, or any other applicable requirement of the Act. EPA is proposing that the revisions, but for a severable provision, meet section 110, part C, and part D of the Federal Clean Air Act (the Act or CAA) and EPA's regulations. Therefore, EPA is proposing to approve the revisions but for a severable portion that allows collateral emissions increases of carbon monoxide (CO) created by the imposition of technology controls to be permitted under the State's Standard Permit (SP) for Pollution Control Projects (PCP). EPA is proposing to disapprove this severable portion concerning the issuance of a PCP SP for the CO collateral emissions increases. EPA is taking comments on this proposal and plans to follow with a final action.

DATES: Written comments must be received on or before November 18, 2010.

ADDRESSES: Submit your comments, identified by Docket No. R06–OAR–2005–TX–0031, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- Follow the on-line instructions for submitting comments.
- *U.S. EPA Region 6* "*Contact Us*" *Web site: http://epa.gov/region6/r6comment.htm.* Please click on "6PD (Multimedia)" and select "Air" before submitting comments.

• *E-mail:* Mr. Rick Barrett at: *barrett.richard@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

• *Fax:* Mr. Rick Barrett, Air Permits Section (6PD–R), at fax number 214–665–7263.

• *Mail:* Mr. Rick Barrett, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

• *Hand or Courier Delivery:* Mr. Rick Barrett, 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 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2005–TX–0031. 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 the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail 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 FOIA 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 submittal is also available for public inspection at the State Air Agency listedbelow during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Barrett, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7227; fax number 214–665–7263; *e-mail address: barrett.richard@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "our," and "us" refers to EPA.

Outline

I. Texas Senate Bill 7

Texas Senate Bill 7 (SB 7), formed under the 76th Texas State Legislature, 1999, amended the Texas Utilities Code (TUC), Title 2, Public Utility Regulatory Act, Subtitle B, Electric Utilities, and created a new Texas Utilities Code Chapter 39, "Restructuring of Electric Utility Industry." SB 7 requires the TCEQ to establish a regulatory program implementing the statute's mandatory emissions reductions for "grandfathered facilities" under the Texas Utilities Code section 39.264. A "grandfathered facility" is one that existed at the time the Legislature amended the Texas Clean Air Act (TCAA) in 1971.

These facilities were not required to comply with (i.e., grandfathered from) the then new requirement to obtain permits for construction or modifications of facilities that emit air contaminants. Texas began permitting new and modified sources in 1971, and sources built before Texas' permitting rules became effective were not required to obtain permits for air emissions as long as they were not modified as defined under Texas' New Source Review SIP program.

Section 39.264 of the TUC now requires EGFs that existed on January 1, 1999, to obtain a permit from the Commission even though these sources were not previously required to obtain a permit under the TCAA, section 382.0518(g).

Section 39.264 of the TUC specifically requires owners or operators of grandfathered EGFs to apply for a permit to emit nitrogen oxides (NO_X) and, for coal-fired grandfathered EGFs, sulfur dioxide (SO_2) and particulate matter (PM) through opacity limitations. These applications were due on or before September 1, 2000. A grandfathered EGF that does not obtain a permit may not operate after May 1, 2003, unless the Commission finds good cause for an extension. Section 39.264 of the TUC requires that for the 12-month period beginning May 1, 2003, and for each 12-month period following, annual emissions of NO_X from grandfathered EGFs not exceed 50% of the NO_X emissions reported to the Commission for 1997. Furthermore, it requires that emissions of SO_2 from coal-fired grandfathered EGFs not exceed 75% of the SO_2 emissions reported to the Commission in 1997. In addition, TUC section 39.264(e) requires electric generating facility permits (EGFPs) for coal-fired, grandfathered EGFs to contain appropriate opacity limitations provided by the commission's rules in 30 Texas Administrative Code (TAC) Ch.111.111, "Requirements for Specified Sources." As described in more detail below, the emission limitations may be satisfied by using control technology or by participating in the banking and trading of allowances under Texas' Emission Banking and Trading of Allowances (EBTA) program.

Overall, SB 7 mandates specific pollution reduction in an area, while

allowing individual sources flexibility in how they meet emissions reductions. As participants in the program, EGFs must obtain a permit allocating them a certain level of emissions which they cannot exceed. In each defined region, the total level of emissions is restricted, or capped, to a level consistent with the SB 7 statutory goals. The individual EGF, to meet its allocated emissions level, can either choose to install pollution controls, shut down operations, or purchase allowances from another source that already reduced emission levels below its permitted amount.

To achieve SB 7's mandate, the TCEQ made revisions to 30 TAC Ch.116, "Control of Air Pollution by Permits for New Construction or Modification," by establishing an allowance and permitting program for regulating grandfathered EGFs under Subchapter I. TCEQ concurrently adopted Chapter 101, Subchapter H, "Emissions Banking and Trading," that establishes a regional cap and trade system to distribute emission allowances for use by EGFs. The new Division 2, Chapter 101, Subchapter H, concerning EBTA, sets out the allowance system to be used to assist grandfathered and electing EGFs in meeting the emission reduction requirements of TUC, section 39.264. Together, the two rules define categories of EGFs that are eligible to use the trading system. As discussed above, the first category consists of grandfathered facilities. The second category of EGFs consist of currently permitted EGFs that are not subject to the permitting requirements mandated by SB 7, yet elect to participate in the allowance trading system. These are referred to as "electing" EGFs and participation in the permitting program will allow electing EGFs to obtain allowances under the EBTA.

The purpose of the proposed rulemaking by EPA is to partially approve and partially disapprove the TCEQ's permit and emission control requirements for grandfathered and electing EGFs and related permit application, monitoring, reporting and public notice procedures. Specifically, the permit application requirements, methods for monitoring and reporting emissions and public notice procedures for grandfathered and electing EGFs are the subject of this proposal action. Please note that EPA's action on 30 TAC Chapter 101, Subchapter H, Division 2, concerning Emissions Banking and Trading of Allowances, is being proposed in a separate notice and is evaluated in a separate TSD. (RME Docket R06–OAR–2005–TX–0012).

The revisions to TCEQ's 30 TAC, Chapter 116, concerning the permitting of grandfathered EGFs, will achieve the Legislature's SB 7 emissions reductions goals. Compliance with these revisions will cause decreased air emissions of NO_X, SO_2, and PM, due to the shutdown of the source, participation in the EBTA, or installation of pollution controls on grandfathered sources that had previously been exempt from having to use pollution controls. Because the revisions will cause additional emission reductions from these sources, they will better serve to protect the public health and welfare. The revisions will also continue to contribute to improvement of air quality and attainment or maintenance of the federal air quality standards. Overall, these provisions serve to improve the existing SIP.

Lastly, these provisions meet the requirement in 40 CFR 51.160(a) that each plan include legally enforceable procedures to determine whether the construction or modification of a facility, building, structure, or installation, or combination of these will result in (1) A violation of applicable portions of the control strategy; or (2) interference with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring State.

II. What action is EPA proposing?

We are proposing to partially approve and partially disapprove the revision to Title 30, Chapter 116, of the TAC submitted by the State of Texas on January 3, 2000. We are also proposing to fully approve the revision to Title 30, Chapter 116, of the TAC submitted by the State of Texas on July 31, 2002. The January 3, 2000 submittal concerns Subchapter A: "Definitions," section 116.18; and Subchapter I: "Electric Generating Facility Permits," sections 116.910–914, 116.916, 116.920–922, 116.930, and 116.931. We are proposing to fully approve all of this 2000 submittal but for the severable reference in 30 TAC 116.911(a)(2) that, if approved, would allow the use of a Texas PCP SP for the permitting of the CO collateral emissions increases. We are proposing to disapprove this reference in submitted 30 TAC 116.911(a)(2) allowing the use of a PCP SP for the collateral CO emissions. The July 31, 2002 submittal concerns Subchapter A: "Definitions," sections 116.10 and 116.18; and Subchapter I: "Electric Generating Facility Permits," sections 116.910, 116.911, 116.913, 116.917, 116.918, 116.921, 116.926, 116.928, and 116.930. The TCEQ adopted these revisions on December 16, 1999, and May 22, 2002, respectively.

Please note that in the July 31, 2002 submittal concerning Subchapter A: "Definitions," section 116.10 is severable and previously acted on as approvable in a separate rulemaking (see explanation below).

EPA intends to take final action on the submitted SB 7 SIP by December 31, 2010, as provided in the Consent Decree entered on January 21, 2010 in *BCCA Appeal Group* v. *EPA*, Case No. 3:08–cv–01491–N (N.D. Tex).

A. January 3, 2000 Submittal

In the January 3, 2000 submittal, TCEQ submitted new rules to Chapter 116, including Subchapter A: "Definitions," delineating certain definitions of words and terms used in Subchapter I; and Subchapter I: "Electric Generating Facility Permits," implementing the applicability requirements for grandfathered and electing electric generating facilities. Representative sections of Subchapter I include: 116.911, Electric Generating Facility Permit Application; 116.913, General and Special Conditions; 116.914, Emissions Monitoring and Reporting Requirements; and 116.921, Notice and Comment Hearings for Initial Issuance.

In 116.911, owners or operators of grandfathered or electing EGFs shall submit an application to TCEQ to authorize nitrogen oxides (NO_X) emissions and, if applicable, sulfur dioxide (SO_2) and particulate matter (PM) emissions before September 11, 2000. The section requires the application to specify various requirements under 116.911(a)(1)–(4), (b)(1)–(2), (c)–(d). Section 116.911 contains one subsection, 116.911(a)(2), "Control method," which references section 116.617, Standard Permits for Pollution Control Projects (PCPs). Under 116.911(a)(2), if an EGF permit applicant proposes the use of new control methods [1] in its initial application, then compliance with particular subsections in 116.617 is required and TCEQ may require air dispersion modeling or ambient monitoring. The Texas PCP SP is not part of the Texas NSR SIP. Moreover, EPA has proposed to disapprove it on September 23, 2009. See 74 FR 48467. Final action was signed on August 31, 2010, under the BCCA consent decree.

[1] TCEQ does not interpret "new control methods" to include the use of combustion techniques. Consequently, no PCP SP is required. Also, if a grandfathered facility chooses to impose add-on controls, this does not fall under the PCP SP requirement either. As a result, a PCP SP is required only for collateral emissions of CO.

Furthermore, the DC Circuit Court of Appeals issued a court decision, *New York* v. *EPA,* No. 02–1387 (June 24, 2005) that addressed the use of PCPs and disapproved their use for Major NSR requirements. In that decision, the court vacated the provisions of the 2002 NSR Reform rule that specifically related to Clean Units and Pollution Control Projects.

In response to the court's decision, EPA filed a Petition for Rehearing or Rehearing En Banc and Request for Clarification on August 8, 2005. In that Petition, EPA requested clarification that the court's ruling on PCP's applies only prospectively. On December 9, 2005, the DC Circuit ordered that "EPA's request for clarification as to any retroactive effect of the ruling on Pollution Control Projects be denied." The court also stated that because there was no specific retroactive application of this provision before the court, it was premature to rule on this request. Based on TCEQ's Technical Supplement, EPA believes that any collateral emissions increases due to controls installed to limit NO_X, SO_2 or PM under the submitted 30 TAC 911(a)(2) are above the significance level for Prevention of Significant Deterioration (PSD) review for CO collateral emissions increases only, and that these collateral CO increases are located at only two PCP SP permitted plants. Therefore, in only two instances were there collateral CO emissions increases that obtained a Texas PCP SP rather than a Major NSR SIP permit. They obtained their PCP SP before the court decision was issued. Furthermore, based upon the Technical Supplement, EPA believes that all of the resultant collateral CO increases across the State of Texas (including those from the two plants) do not interfere with attainment or maintenance of the NAAQS for CO, *et al.,* nor cause or contribute to increase in PSD increments, much less a violation of any NAAQS. Nevertheless, based on the above court decision and the PCP SP not being part of the Texas NSR SIP, the submitted subsection 116.911(a)(2) is not approvable, and therefore we are proposing to disapprove this submitted subsection for collateral increases of CO emissions. Note that the entire State of Texas is currently in attainment for CO.

Section 116.913 contains general conditions applicable to every EGF permit, and allows the TCEQ to include special conditions in individual permits. Under 116.913, an EGF permit authorizes nitrogen oxides (NO_X) emissions from all grandfathered or electing electric generating facilities (EGF); and sulfur dioxide (SO_2) emissions and particulate matter emissions, through opacity limitations, for coal-fired grandfathered or electing EGFs. The grandfathered or electing EGF must comply with Chapter 101, Subchapter H, Division 2 of this title, relating to EBTA, including the requirement to maintain allowances in a compliance account. Facilities subject to the EBTA shall quantify and report emissions using the monitoring and reporting requirements of section 116.914. As noted previously, EPA's action on Chapter 101, Subchapter H, Division 2, is being proposed in a separate action (RME Docket R06–OAR–2005–TX–0012).

Section 116.914, specifies the monitoring and reporting requirements for EGFPs. The rule authorizes the use of Continuous Emission Monitoring (CEM) under the Acid Rain Program, which contains monitoring requirements for SO_2 for affected units. Since the acid rain program already requires extensive monitoring, this section authorizes the use of that monitoring for EGF's that are subject to the acid rain program for compliance with Subchapter I. EGFs not subject to the Acid Rain Program would have three choices in monitoring: the EGF may choose to meet either the Part 75 monitoring requirements, or the requirements of Title 40 CFR part 60; or, the EGF may provide an alternative monitoring plan that would be incorporated into the permit conditions. This alternate monitoring plan must meet state and federal requirements for approval. Monitoring and reporting requirements provisions related to the EBTA rule are set forth in section101.336(a), per 30 TAC Chapter 116.914.

Section 116.921 contains the hearing requirements for the initial issuance of EGFPs. If a hearing is requested by a person who may be affected by emissions from the grandfathered or electing EGF, and that request is reasonable, the commission will hold a hearing. The section requires that notice of hearing on a draft EGFP be published in the public notice section of one issue of a newspaper of general circulation in the municipality or the nearest municipality where the EGF is located. The notice must be published at least 30 days prior to a hearing.

The State of Texas submitted the SIP revision to EPA after adequate notice and public hearing on January 3, 2000. The Technical Supplement was submitted on August 5, 2009. *See* our Technical Support Document, Attachment C, for more details.

B. July 31, 2002 Submittal

In the July 31, 2002 submittal, Texas submitted new and amended rules to Chapter 116, which include Subchapter A: "Definitions," delineating certain definitions of words and terms used in Subchapter I; Subchapter H: "Permits for Grandfathered Facilities," Division 1, "General Applicability;" Division 2, "Small Business Stationary Source Permits," "Pipeline Facilities Permits," and "Existing Facility Permits;" Division 3, "Existing Facility Flexible Permits;" and Subchapter I: "Electric Generating Facility Permits." In addition, Texas submitted TAC Chapter 39, "Public Notice," which includes Subchapter H: "Applicability and General Provisions," and Subchapter K: "Public Notice of Air Quality Applications."

EPA is acting only on Subchapter A: "Definitions," and Subchapter I: "Electric Generating Facility Permits" of Chapter 116 from the July 31, 2002 submittal. The above-referenced provisions contained in the Subchapter H of Ch. 116 and the Subchapter K of Chapter 39 are severable and not part of today's proposal action. Other revisions to Ch.116 establish requirements and procedures in Subchapter H for the permitting of grandfathered facilities in accordance with 5.02–5.04 of House Bill (HB) 2912, 77th Legislature, 2001, and Section 78 of HB 2914, 77th Legislature, 2001, which establishes an incentive program for the reduction of emissions of nitrogen oxides from certain grandfathered reciprocating internal combustion engines associated with pipelines. These severable submittals will be acted on in separate rulemakings.

The submitted amendments to Subchapter A, Section 116.10, "General Definitions," revise the definition of "grandfathered facility" to be consistent with TCAA, section 382.0518(g). The revised definition clarifies that a grandfathered facility is one that is not a new facility, was constructed prior to August 30, 1971 (or no construction contract was executed on or before August 30, 1971 that specified a beginning construction date on or before February 29, 1972) and has not been modified since August 30, 1971. This definition is severable and previously acted on as approvable in a separate rulemaking (*See* 75 FR 19468, April 14, 2010). Therefore, it now is part of the Texas NSR SIP already.

The submitted amendments to Subchapter A, Section 116.18, "Electric Generating Facility Permits Definitions," add a definition for "natural gas-fired electric generating facility" for consistency only with the EGF permit

requirements of HB 2912. HB 2912 provides that a natural gas fired EGF includes a facility that was designed to burn both natural gas and fuel oil. The amendments also include a definition for "normal annual operating schedule," to establish the normal annual operating schedule at an EGF site.

The submitted amendments to Subchapter I, Electric Generating Facility Permits, implement the portions of TCAA, section 382.0518, which create a new EGF permit. Representative sections of Subchapter I include: 116.911, Electric Generating Facility Permit Application; 116.913, General and Special Conditions; 116.917, Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites; and 116.918, Additional General and Special Conditions for Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites.

Under amended section 116.911, Electric Generating Facility Permit Application, a new EGF permit will allow the owners or operators of EGFs who have already applied for a permit required by SB 7 to apply for a permit for: (1) Generators that do not generate electric energy for compensation and are not used more than 10% of the annual operating schedule; and (2) auxiliary fossil-fuel-fired combustion facilities that do not generate electric energy and do not emit more than 100 tpy of any air contaminant. The adopted changes will also allow coal-fired EGFs which were required to apply for a permit under SB 7 to apply for an EGF permit for criteria pollutants other than NO_X, SO_2, and PM as it relates to opacity.

Section 116.913, General and Special Conditions, is amended to update the conditions of any permit issued under Subchapter I, including the pollutants or allowances that may be authorized for each permit, and the requirements of the SB 7 allowance trading program for the additional equipment which may be permitted under Subchapter I. The commission will issue a permit to these facilities.

Section 116.917, Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites outlines the application requirements for grandfathered coal-fired EGFs which choose to permit their additional criteria pollutants, and the auxiliary generators and the additional combustion equipment which can now be permitted under Subchapter I. To be consistent with the current review process for permits and applicable federal requirements, 116.917 requires the owner or operator of a grandfathered facility applying for an EGF permit to demonstrate that the facility meets applicable federal New Source Performance Standards (NSPS) and National Emission Standard for Hazardous Air Pollutants (NESHAP). If applicable, facilities would be required to comply with PSD and nonattainment review as specified in Chapter 116, Subchapter B, New Source Review Permits.

Section 116.918, Additional General and Special Conditions for Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites identifies some of the general and special conditions which may be included in any permit issued under the adopted section 116.917. The holders of a permit shall comply with all such conditions. General conditions include: Sampling requirements, equivalency of methods, recordkeeping, maximum allowable emission rates, maintenance of emission control, and compliance with rules. The holders of permits shall also comply with all special conditions contained in the permit document.

The State of Texas submitted the SIP revision to EPA after adequate notice and public hearing on July 31, 2002. See our Technical Support Document, Attachment B, for more details.

III. Why are we proposing to partially approve and partially disapprove the January 3, 2000 submittal and approve the July 31, 2002 SIP submittal?

A. January 3, 2000 Submittal

Regarding the January 3, 2000 submittal, it is the intent of SB 7 that for the 12-month period beginning May 1, 2003, and for each 12-month period following, annual emissions of NO_X from grandfathered EGFs not exceed 50% of the NO_X emissions reported to the Commission for 1997. Furthermore, it is the intent of the legislation that emissions of SO_2 from coal-fired EGFs not exceed 75% of the SO_2 emissions reported to the Commission in 1997, and to contain appropriate opacity limitations by way of permitting the emissions of particulate matter. These provisions will cause additional emission reductions and ensure better protection of public health and welfare, and improve the existing SIP. These provisions, with the exception of 116.911(a)(2) discussed above, meet the requirement in 40 CFR 51.160(a) that each plan include legally enforceable procedures to determine whether the construction or modification of a facility, building, structure, or installation, or combination of these will result in (1) A violation of applicable portions of the control strategy; or (2) interference with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring State.

The revision also meets 40 CFR 51.160(e) by identifying a type of facility that will be subject to review under 40 CFR 51.160(a). In this case, TCEQ specifically identified grandfathered and electing electric generating facilities. See our Technical Support Document, Attachment A, for more details.

B. July 31, 2002 Submittal

Regarding the July 31, 2002 submittal, this rulemaking allows the owners or operators of previously grandfathered and electing EGFs who have already applied for a permit required by SB 7 to also obtain a permit for all air contaminants, certain generators and auxiliary fossil fuel fired combustion facilities The adopted changes will also allow coal fired EGFs which were required to apply for a permit under SB 7 to apply for an EGF permit for criteria pollutants other than NO_X, SO_2, and PM as it relates to opacity. The permits issued for these facilities are expected to result in reduced emissions of air contaminants and improved compliance with state and federal air pollution control requirements. Further, these permits should achieve better protection of public health and welfare, and improve the existing SIP. These provisions meet the requirement in 40 CFR 51.160(a) that each plan include legally enforceable procedures to determine whether the construction or modification of a facility, building, structure, or installation, or combination of these will result in (1) a violation of applicable portions of the control strategy; or (2) interference with attainment or maintenance of a national standard in the state in which the proposed source (or modification) is located or in a neighboring state.

The revision also meets 40 CFR 51.160(e) by identifying a type of facility that will be subject to review under 40 CFR 51.160(a). In this case, Texas specifically identified grandfathered and electing electric generating facilities. See our Technical Support Document, Attachment B, for more details.

C. CAA 110(l) Analysis

Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act. EPA is proposing to approve these revisions because they improve the SIP in accordance with Section 110 of the Act. The reductions achieved through the SB7 program are throughout the State of Texas and include reducing precursors to ozone (NOx), SO2 emissions, and PM emissions. The NOx emissions reductions in certain regions of the State were assumed in Texas' ozone attainment demonstration plans and will provide benefits in reducing ozone concentrations in nonattainment areas and near nonattainment areas, as well as attainment areas. There are no SO2 nonattainment areas in Texas. The only PM–10 nonattainment area in Texas is the El Paso geographic area. Any reductions in PM10 emissions due to these revisions should contribute to attainment of the PM10 NAAQS in that area. Further, EPA believes that any collateral emissions increases in carbon dioxide (CO) due to controls installed to limit NOx do not interfere with attainment or maintenance of the NAAQS for CO, nor cause or contribute to increase in any PSD increments. Texas is also currently in attainment for CO. Further, the permitting of grandfathered sources will benefit the public due to reductions of air contaminants emitted from affected EGFs, and present the opportunity for public participation and comment in the permitting procedures for formerly grandfathered EGFs and other participating EGFs. The program establishes requirements, procedures, deadlines and responsibilities for EGF permit applications for facilities formerly exempt from permit requirements.

IV. Proposed Action

EPA is proposing to partially approve and partially disapprove revisions to the Texas SIP that include 30 TAC Chapter 116, Subchapter A: "Definitions," section 116.18; and Subchapter I: "Electric Generating Facility Permits," sections 116.910–914, 116.916, 116.920–922, 116.930, and 116.931, which Texas submitted on January 3, 2000.

EPA is proposing to approve all of the January 3, 2000, SIP revision submittal as part of the Texas NSR SIP but for 30 TAC 116.911(a)(2). EPA is proposing to disapprove the submitted severable 30 TAC 116.911(a)(2) for collateral emissions increases of CO that are allowed to be permitted under the Texas PCP SP.

Further, EPA is proposing to approve revisions to the Texas SIP that include 30 TAC Chapter 116, Subchapter A: "Definitions," section 116.18; and Subchapter I: "Electric Generating Facility Permits," sections 116.910, 116.911, 116.913, 116.917, 116.918, 116.921, 116.926, 116.928, and 116.930, which Texas submitted on July 31, 2002. We are proposing to take no action on Chapter 116, Subchapter H: "Permits for Grandfathered Facilities," which Texas submitted on July 31, 2002. The State understands that EPA will take future action on Subchapter H because it is independent from Subchapters A and I, and action is not necessary at this time.

The January 3, 2000 and July 31, 2002 submittals address the applicability and permitting requirements for grandfathered and electing electric generating facilities. The revisions will contribute to improvement in overall air quality in Texas. There will be no increase in ozone, SO2, and PM concentration levels because of approving the revisions. We have evaluated the State's submittal, determined that it meets the applicable requirements of the CAA and EPA air quality regulations, and is consistent with EPA policy.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (*e.g.,* higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 "for State, local, or tribal governments or the private sector." EPA has determined that the proposed

disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (59 FR 22951, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen oxides, Nonattainment, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

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

Dated: October 8, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 2010–26259 Filed 10–18–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket: EPA–R10–OAR–2010–0433; FRL–9214–8]

Determination of Attainment for PM_{10}: Eagle River PM_{10} Nonattainment Area, Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposed to determine that the Eagle River nonattainment area in Alaska attained the National Ambient Air Quality Standard for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM_{10}) as of December 31, 1994.

DATES: Comments must be received on or before November 18, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–0433, by any of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.