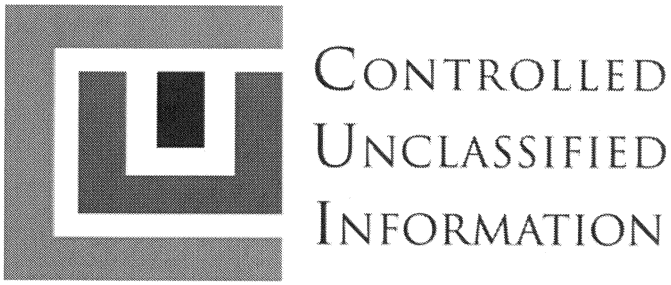

(12) The National Declassification Center (NDC).

(f) NARA uses its office, program, and other official logos (usually in conjunction with the agency logo) for official business, which includes, but is not limited to:

* * * * *

(g) *Use of logos by others.* NARA logos may be used by the public and other Federal agencies for events or activities co-sponsored by NARA, but only with the written approval of the Archivist or his designee. *See* Subpart C for procedures to request approval for use.

Subpart C—[Amended]

■ 4. Revise the heading for § 1200.8 to read as follows:

§ 1200.8 How do I request to use the official seals and logos?

* * * * *

Dated: January 5, 2011.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2011–492 Filed 1–10–11; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0031; FRL–9248–9]

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: Final rule.

SUMMARY: EPA is taking final action 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 that 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. The 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 has determined 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 taking final action 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 taking final action to disapprove this severable portion concerning the issuance of a PCP SP for the CO collateral emissions increases.

DATES: This final rule is effective on February 10, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2005–TX–0031. All documents in this docket are listed at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either

electronically through *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 am and 4:30 pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below 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, which is part of the EPA record, is also available for public inspection at the State Air Agency listed below 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. What action is EPA taking?

We are partially approving and partially disapproving the revision to Title 30, Chapter 116, of the TAC submitted by the State of Texas on January 3, 2000. We are also fully approving 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 fully approving 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 disapproving 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 was approved in a separate rulemaking (*See* 75 FR 19468 April 14, 2010).

EPA is taking final action on the submitted application and permitting procedures for grandfathered EGFs, as mandated by the Texas Legislature, to achieve NO_X, SO_2 and PM emission reductions (Texas SB7 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).

II. Background

A. 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 all grandfathered EGFs to apply for a permit to emit NO_X and, for coal-fired grandfathered EGFs, SO_2, and 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 are 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 revised 30 TAC Chapter 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.

Please note that EPA's action on 30 TAC Chapter 101, Subchapter H, Division 2, concerning Emissions Banking and Trading of Allowances, is being finalized in a separate notice and is evaluated in a separate TSD. (RME Docket R06–OAR–2005–TX–0012).

The background for today's actions is also discussed in more detail in our October 19, 2010, proposal to partially approve and partially disapprove revisions to the Texas SIP (75 FR 64235–64240).

B. January 3, 2000 Submittal

Regarding the January 3, 2000 submittal, SB 7 requires that for the 12-month period beginning May 1, 2003, and for each 12-month period following, annual emissions of NO_X from all grandfathered EGFs not exceed 50% of the NO_X emissions reported to the Commission for 1997. Furthermore, the legislation requires that emissions of SO_2 from all coal-fired grandfathered 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.

C. July 31, 2002 Submittal

Regarding the July 31, 2002 submittal, this submittal allows the owners or operators of previously grandfathered and electing EGFs who have already applied for an electric generating facility (EGF) permit required by SB 7 to also obtain a permit for all air contaminants, certain generators and auxiliary fossil fuel fired combustion facilities.

III. What are the grounds for these actions?

A. January 3, 2000 Submittal

These submitted provisions, with the exception of 116.911(a)(2) discussed below, 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. As such, they are consistent with the Act and its permitting requirements.

Regarding the submitted 30 TAC 116.911(a)(2), EPA approved Texas's general regulations for Standard Permits in 30 TAC Subchapter F of 30 TAC Chapter 116 on November 14, 2003 (68 FR 64548) as meeting the minor NSR SIP requirements. The Texas Clean Air Act provides that the TCEQ may issue a standard permit for "new or existing similar facilities" if it is enforceable and compliance can be adequately monitored. *See* section 382.05195 of the TCAA. EPA approved the State's Standard Permit program as part of the Texas Minor NSR SIP program on November 14, 2003 (68 FR 64548). However, when EPA approved the Texas Standard Permits Program as part of the Texas Minor NSR SIP, it explicitly did not approve the Pollution Control Project (PCP) Standard Permit (30 TAC 116.617). This is the PCP SP referenced in 30 TAC 116.911(a)(2) of this SIP submittal which owners or operators of grandfathered or electing electric generating facilities used to permit collateral emissions of CO which, otherwise, would have triggered PSD review. Following the *State of New York, et al.* v. *EPA,* 413 F.3d 801 (D.C. Cir. 2005) court decision (New York I), Texas submitted a repeal of the previously submitted PCP Standard Permit and submitted the adoption of a new PCP Standard Permit at 30 TAC 116.617—State Pollution Control Project Standard Permit, on February 1, 2006. One of the main reasons Texas adopted a new PCP Standard Permit was to meet the new Federal requirements to explicitly limit this PCP Standard Permit only to Minor NSR. In New York I, the Court vacated the federal pollution control project provisions for NNSR and PSD. Although the new PCP Standard Permit explicitly prohibits the use of it for Major NSR purposes, TCEQ failed to demonstrate how this particular Standard Permit met the Texas Standard Permits NSR SIP since it applies to numerous types of pollution control projects, which can be used at any source that wants to use a PCP, and is not an authorization for similar sources. EPA disapproved the new PCP Standard Permit submittal on September 15, 2010. 75 FR 56,424 (September 15, 2010). Thus, we are disapproving the submitted 116.911 (a)(2) because it refers to and relies on the PCP SP that does not meet the applicable requirements of the Act, and was previously disapproved by EPA as a part of the Texas SIP.

The rationale for today's actions is also discussed in more detail in our October 19, 2010, proposal to partially approve and partially disapprove revisions to the Texas SIP (75 FR 64237–64239). See our Technical Support Document, Attachment A, for additional details.

B. July 31, 2002 Submittal

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. As such, they are consistent with the Act and its permitting requirements.

The rationale for today's actions is also discussed in more detail in our October 19, 2010, proposal to partially approve and partially disapprove revisions to the Texas SIP (75 FR 64239). See our Technical Support Document, Attachment B, for additional details.

IV. Did we receive public comments on the proposed rulemaking?

In response to our October 19, 2010, proposal, we received comments from the following: Association of Electric Companies of Texas (AECT); Baker Botts, L.L.P., on behalf of Texas Industrial Project (TIP); Jackson Walker L.L.P., on behalf of the Gulf Coast Lignite Coalition (GCLC); Luminant Generation Company LLC (Luminant); Texas Commission on Environmental Quality (TCEQ); and Texas Mining and Reclamation Association (TMRA).

We respond to these comments in our evaluation and review under this final action below.

Comment 1: TMRA, Luminant, GCLC, AECT, and TCEQ commented generally that the submitted 30 TAC 116.911(a)(2) was in compliance with all federal regulations and policies at the time it was adopted and submitted to EPA, and the subsequent court decisions including the EPA appeal decision, to vacate the provision should not be applied retroactively. Further, these commenters assert that EPA action on this provision should apply prospectively only and not to any permits issued prior to the court decisions.

Response: EPA disagrees with this comment. As discussed above, EPA approved the State's Standard Permit program as part of the Texas Minor NSR SIP program on November 14, 2003 (68 FR 64548). When EPA approved the Texas Standard Permits Program as part of the Texas Minor NSR SIP, it explicitly DID NOT approve the Pollution Control Project (PCP) Standard Permit (30 TAC 116.617). This is the PCP SP referenced in 30 TAC 116.911(a)(2) of this SIP submittal which owners or operators of grandfathered or electing electric generating facilities used to permit collateral emissions of CO which, otherwise, would have triggered PSD review. Following New York 1, Texas submitted a repeal of the previously submitted PCP Standard Permit and submitted the adoption of a new PCP Standard Permit at 30 TAC 116.617—State Pollution Control Project Standard Permit, on February 1, 2006. One of the main reasons Texas adopted a new PCP Standard Permit was to meet the new Federal requirements to explicitly limit this PCP Standard Permit only to Minor NSR. In New York 1, the Court vacated the federal pollution control project provisions for NNSR and PSD. Although the new PCP Standard Permit explicitly prohibits the use of it for Major NSR purposes, TCEQ has failed to demonstrate how this particular Standard Permit meets the Texas Standard Permits NSR SIP since it applies to numerous types of pollution control projects, which can be used at any source that wants to use a PCP, and is not an authorization for similar sources. EPA disapproved the new PCP Standard Permit submittal on September 15, 2010. 75 FR 56,424 (September 15, 2010).

We are disapproving the submitted 116.911(a)(2) because the reference in it which allows obtaining a PCP SP for the collateral emissions does not meet the applicable requirements of the Act, as discussed herein, and was disapproved by EPA as a part of the Texas SIP. EPA is required to review a SIP revision for its compliance with the Act and EPA regulations. See CAA section 110(k)(3); *see* also *BCCA Appeal Group* v. *EPA,* 355 F 3d.817, 822 (5th Cir 2003); *Natural Resources Defense Council, Inc.* v. *Browner,* 57 F.3d 1122, 1123 (D.C. Cir 1995).

Comment 2: TMRA, TIP, Luminant, GCLC, and AECT commented generally that the Clean Air Act requires that EPA "shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *." EPA should therefore approve 116.911(a)(2) because EPA discusses in its proposed rule dated October 19, 2010, that the CO increases do not interfere with attainment or maintenance of the NAAQS for CO, nor cause or contribute to increase in PSD increments, much less a violation of any NAAQS.

Response: This comment misunderstands the basis on which we are disapproving 116.911(a)(2). We are disapproving the submitted 30 TAC 116.911(a)(2) because it allows the source to obtain a permit for its collateral CO emissions that is not a part of the Texas SIP. EPA previously disapproved the permit allowed for the collateral CO emissions because it did not meet the applicable requirements of the Act. EPA is required to review a SIP revision for its compliance with the Act and EPA regulations. See CAA section 110(k)(3); *see* also *BCCA Appeal Group* v. *EPA,* 355 F 3d.817, 822 (5th Cir 2003); *Natural Resources Defense Council, Inc.* v. *Browner,* 57 F.3d 1122, 1123 (D.C. Cir 1995).

Comment 3: TIP, Luminant, and GCLC commented generally that the court decision of June 24, 2005, does not apply to 116.911(a)(2). That court decision dealt with an exclusion from major NSR, whereas the PCP SP is a minor NSR permitting process and authorization tool and the SP cannot be used to circumvent major NSR. One commenter noted that "in light of" the court decision, on February 1, 2006, Texas submitted to EPA a revised version of 30 TAC § 116.617 (Standard Permits for Pollution Control Projects) to "limit the use of the state's PCP SP to Minor NSR".

Response: EPA disagrees with this comment. See response to comment 1.

Comment 4: TMRA, Luminant, and AECT commented generally that they disagree with EPA's allegation that there were two facilities where collateral emissions of Carbon Monoxide (CO) above the PSD significance level occurred following the installation of pollution control equipment. Further, that they disagree with EPA's proposal to disapprove these already issued permits.

Response: EPA disagrees with this comment. EPA is not disapproving these two already issued permits with this SIP action. Our disapproval is strictly limited to the provision 30 TAC 116.911(a)(2) of the January 3, 2000, SIP submittal. Although it is not a basis for EPA's final action here, EPA stands by its previous discussion of the facilities where collateral emissions of CO above PSD significance levels occurred following the installation of pollution control equipment.

Comment 5: TMRA, Luminant, and AECT commented that EPA should follow its established position that Pollution Control Project permits are acceptable under the Clean Air Act.

Response: It is not EPA's position, established or otherwise, that PCP permits are acceptable under the Clean Air Act for Major NSR. Furthermore, the New York I opinion addressed the use of PCPs and disapproved their use for Major NSR requirements. In that decision, the court vacated the provisions of the Federal 2002 NSR Reform rule that specifically related to PCPs. The EPA must comply with the court decision. EPA disapproved the State's submitted PCP SP for Minor NSR. See response to comment 1.

Comment 6: TMRA and AECT commented generally that the proposed disapproval has a chilling effect on much needed economic investment and makes it even more difficult for companies to create jobs and provide for economic growth. Further, that the Senate Bill 7 program has achieved substantial emission reductions while providing a fair and predictable regulatory framework that is protective of human health and the environment.

Response: Under the NAAQS provisions of the CAA, air pollution control at its source is the primary responsibility of States and local governments. EPA is respectful of the Act and cognizant of the cooperative federalism principle contained therein. However, while the Act does give States a fair degree of latitude in choosing the mix of controls necessary to meet and maintain the NAAQS, it also places some limits on the choices States can make. EPA's role is to ensure that the SIP submittal is consistent with the CAA. Any SIP submittal must adhere to applicable requirements of the federal CAA, including the obligation to provide for attainment and maintenance of the NAAQS and to ensure that the SIP may be adequately enforced. EPA's statutory responsibilities in reviewing a SIP are to ensure it meets the requirements of the Act. As explained in

the proposal and above, as part of EPA's review, we determined that the provision providing for the obtaining of a non-SIP PCP SP is inconsistent with the CAA. See CAA section 110(k)(3); *see also BCCA Appeal Group* v. *EPA,* 355 F 3d.817, 822 (5th Cir 2003); *Natural Resources Defense Council, Inc.* v. *Browner,* 57 F.3d 1122, 1123 (D.C. Cir 1995).

Comment 7: Luminant commented that EPA incorrectly concludes that its prior disapproval of 30 TAC 116.617 necessitates disapproval of 30 TAC 116.911(a)(2). Rather, EPA must independently justify its disapproval of these provisions relating to the Texas Senate Bill No. 7 ("SB7") permitting program. Further, that EPA's disapproval of 30 TAC 116.617 does not justify or require disapproval of 30 TAC 116.911(a)(2). Also, the obligation thus originates from the SB7 permit rules, and EPA has an independent obligation to justify its disapproval of the substance of those requirements in this rulemaking and not simply rely on a prior one that did not involve the SB7 permit program.

Response: EPA disagrees with this comment. 30 TAC 116.911(a)(2) allows a SB7 source that has collateral emissions of CO to obtain a TCEQ PCP SP rather than obtaining a Texas NSR SIP permit, for its CO collateral emissions. The PCP SP is not a part of the Texas NSR SIP. See the response to comment 1. Moreover, EPA is required to review a SIP revision for its compliance with the Act and EPA regulations. See CAA section 110(k)(3); *see also BCCA Appeal Group* v. *EPA,* 355 F 3d.817, 822 (5th Cir 2003); *Natural Resources Defense Council, Inc.* v. *Browner,* 57 F.3d 1122, 1123 (D.C. Cir 1995).

Comment 8: Luminant commented that it supports the remainder of proposed approval of the January 3, 2000 and July 31, 2002 submittals. It also supports the EPA's November 16, 2010 direct final rule to approve the EBTA program.

Response: EPA acknowledges this comment.

Comment 9: The TCEQ commented that it maintains its position that § 116.617 is an efficient and legally supportable authorization for pollution control projects in Texas.

Response: EPA disagrees with this comment. We disapproved the PCP SP on September 15, 2010. *See* 75 FR 56,424 (September 15, 2010).

IV. Final Action

EPA is partially approving and partially disapproving 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 approving 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 disapproving 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 approving 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 taking 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, SO_2, 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 final action has been determined not to be a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993).

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 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). Because this final action does not impose an information collection burden, the Paperwork Reduction Act does not apply.

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. This rule will not have a significant impact on a substantial number of small entities because SIP approvals and disapprovals under section 110 and part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the States are already imposing.

Furthermore, as explained in this action, the submissions do not meet the requirements of the Act and EPA cannot approve the submissions. The final disapproval will not affect any existing State requirements applicable to small entities in the State of Texas. Federal disapproval of a State submittal does not affect its State enforceability. After considering the economic impacts of today's rulemaking on small entities, and because the Federal SIP disapproval does not create any new requirements or impact a substantial number of small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,*

427 U.S. 246, 255–66 (1976); 42 7410(a)(2).

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 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 Federal action determines that pre-existing requirements under State or local law should not be approved as part of the Federally approved SIP. It 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 disapproving 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. This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This action does not involve or impose any requirements that affect Indian Tribes. 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 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 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 the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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. Today's action does not require the public to perform activities conducive to the use of voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, (February 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 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 disapproves 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 E'xecutive Order 12898.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *March 14, 2011.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

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

Dated: December 29, 2010.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7410 *et seq.*

Subpart SS—Texas

■ 2. The table in § 52.2270 (c) entitled "EPA Approved Regulations in the Texas SIP" is amended under Chapter 116—Control of Air Pollution by Permits for New Construction or Modification, as follows:

■ a. Immediately following the entry for Section 116.14, by adding a new entry for Section 116.18, Electric Generating Facility Permits Definitions; and

■ b. Immediately following section 116.615, by adding a new centered heading entitled "Subchapter I—Electric Generating Facility Permits" followed by new entries for Sections 116.910, 116.911, 116.912, 116.913, 116.914, 116.916, 116.917, 116.918, 116.920, 116.921, 116.922, 116.926, 116.928, 116.930, and 116.931.

The additions read as follows:

§ 52.2270 Identification of plan.

(c) * * *

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification				
*	*	*	*	*
Subchapter A—Definitions				
*	*	*	*	*
Section 116.18	Electric Generating Facility Permits Definitions.	5/22/2002	1/11/2011, [Insert FR page number where document begins].	
*	*	*	*	*
Subchapter I—Electric Generating Facility Permits				
*	*	*	*	*
Section 116.910	Applicability	5/22/2002	1/11/2011, [Insert FR page number where document begins].	
Section 116.911	Electric Generating Facility Permit.	5/22/2002	1/11/2011, [Insert FR page number where document begins].	116.911(a)(2) is not in the SIP.
Section 116.912	Electric Generating Facilities	12/16/1999	1/11/2011, [Insert FR page number where document begins].	
Section 116.913	General and Special Conditions	5/22/2002	1/11/2011, [Insert FR page number where document begins].	
Section 116.914	Emissions Monitoring and Reporting Requirements.	12/16/1999	1/11/2011, [Insert FR page number where document begins].	
Section 116.916	Permits for Grandfathered and Electing Generating Facilities in El Paso County.	12/16/1999	1/11/2011, [Insert FR page number where document begins].	
Section 116.917	Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Facilities Located at Electric Generating Facility Sites.	5/22/2002	1/11/2011, [Insert FR page number where document begins].	
Section 116.918	Additional General Special Conditions for Grandfathered Coal-Fired Electric Generating Facilities and Certain Facilities Located at Electric Generating Facility Sites.	5/22/2002	1/11/2011, [Insert FR page number where document begins].	
Section 116.920	Applicability	12/16/1999	1/11/2011, [Insert FR page number where document begins].	
Section 116.921	Notice and Comment Hearings for Initial Issuance.	5/22/2002	1/11/2011, [Insert FR page number where document begins].	

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Section 116.922	Notice of Final Action	12/16/1999	1/11/2011, [Insert FR page number where document begins].	
Section 116.926	Permit Fee	5/22/2002	1/11/2011, [Insert FR page number where document begins].	
Section 116.928	Delegation	5/22/2002	1/11/2011, [Insert FR page number where document begins].	
Section 116.930	Amendments and Alterations Issued Under this Subchapter.	5/22/2002	1/11/2011, [Insert FR page number where document begins].	
Section 116.931	Renewal	12/16/1999	1/11/2011, [Insert FR page number where document begins].	
*	*	*	*	*	*	*

■ 3. Section 52.2273 is amended by adding a new paragraph (f) to read as follows:

§ 52.2273 Approval status.

* * * * *

(f) EPA is disapproving the Texas SIP revision submittals under 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification as follows:

(1) Subchapter I—Electric Generating Facility Permits—Section 116.911(a)(2) (Electric Generating Facility Permit), adopted December 16, 1999, and submitted January 3, 2000.

[FR Doc. 2011–222 Filed 1–10–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2010–0718; FRL–9250–1]

Determinations of Attainment by the Applicable Attainment Date for the Hayden, Nogales, Paul Spur/Douglas PM_{10} Nonattainment Areas, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making final determinations that the Hayden, Nogales, and Paul Spur/Douglas nonattainment areas in Arizona attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM_{10}) by their applicable attainment dates of December 31, 1994. On the basis of these determinations, EPA concludes that these three "moderate" nonattainment areas are not subject to reclassification by operation of law to "serious." EPA is not finalizing determinations with respect to the air quality in these areas subsequent to their 1994 attainment dates.

DATES: *Effective Date:* This rule is effective on February 10, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2010–0718 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Wienke Tax at telephone number: (415) 947–4192; e-mail address: *tax.wienke@epa.gov,* or the above EPA, Region IX address.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

Table of Contents

I. Context for Today's Actions

On November 2, 2010 (75 FR 67220), we published a direct final rule that made certain determinations we are making in this document. On November 2, 2010 (75 FR 67303), we also published a corresponding proposed rule in the event that we received adverse comment leading us to withdraw the direct final rule. In our direct final rule, we indicated that we would withdraw the direct final rule if we received adverse comments, and address public comments in a subsequent final rule based on the proposed rule. On November 3, 2010, we received adverse comments, and subsequently withdrew the direct final rule (75 FR 72964, November 29, 2010). Today, we take final action based on our November 2, 2010 proposed rule and our consideration of the public comments received.

II. Summary of Proposed Actions

In our November 2, 2010 proposed rule, we proposed to determine, pursuant to section 188(b)(2) of the Clean Air Act, that three Arizona "moderate" PM_{10} nonattainment areas (Hayden, Nogales, and Paul Spur/Douglas) had attained the PM_{10} NAAQS by the applicable attainment date (December 31, 1994), and that, based on these proposed determinations, we concluded that none of these areas is subject to reclassification to serious by operation of law. We also proposed to find that more recent data for 2007–2009 show none of the areas is currently attaining the standard. More detailed information is contained in the November 2 direct final rule, which is summarized in the paragraphs that follow.

First, our direct final rule described the relevant NAAQS, 150 micrograms per cubic meter ($\mu g/m^3$), 24-hour average, against which monitored ambient concentrations of PM_{10} in the three subject areas (Hayden,[1] Nogales,[2]

[1] The Hayden planning area straddles Gila and Pinal counties at the confluence of the Gila and San Pedro rivers in east central Arizona. The nonattainment area covers roughly 700 square miles of mountainous terrain. Cities and towns within this area include Kearney (population roughly 2,800), Hayden (population roughly 800), and Winkelman (population roughly 400).

[2] The Nogales planning area covers approximately 70 square miles along the border with Mexico within Santa Cruz County. The only significant population center in this area is the city of Nogales with a population of roughly 21,000. The population of Nogales, Mexico, which lies just