

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R06-OAR-2008-0638; FRL-9470-4]

Approval and Promulgation of Implementation Plans; Texas; Infrastructure and Interstate Transport Requirements for the 1997 Ozone and the 1997 and 2006 PM_{2.5} NAAQS**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove submittals from the state of Texas pursuant to the Clean Air Act (CAA or Act) that address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and 1997 and 2006 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS or standards). We are proposing to find that the current Texas State Implementation Plan (SIP) meets the infrastructure requirements for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS at 110(a)(2)(A), (B), (E), (F), (G), (H), (K), (L), (M), and portions of (C), (D)(ii) and (J). We are proposing to find that the current Texas SIP does not meet the infrastructure requirements for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS at 110(a)(2) for portions of (C), (D)(ii) and (J) because Texas has stated it cannot issue permits for and does not intend to regulate greenhouse gas (GHG) emissions. (See letter from Bryan W. Shaw and Greg Abbott to Lisa Jackson and Al Armendariz, dated August 2, 2010, in the docket for this rulemaking). EPA is also proposing to partially approve and partially disapprove SIP revisions submitted by the state of Texas for the purpose of addressing the "good neighbor" provisions of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS. These SIP revisions address the requirement that the Texas SIP have adequate provisions to prohibit air emissions from adversely affecting another state's air quality through interstate transport. In this action, EPA is proposing to partially approve and partially disapprove the provisions of these SIP submissions that emissions from sources in Texas do not interfere with measures required in the SIP of any other state under part C of the CAA to prevent significant deterioration of air quality, with regard to the 1997 8-hour ozone NAAQS and the 1997 and 2006

PM_{2.5} NAAQS. The partial disapproval is again because Texas cannot issue permits for emissions of GHG. For purposes of the 1997 8-hour ozone NAAQS, EPA is also proposing to approve SIP revisions that modify the Texas SIP for Prevention of Significant Deterioration (PSD) to include nitrogen oxides (NO_x) as an ozone precursor. This action is being taken under section 110 and part C of the Act.

DATES: Comments must be received on or before October 24, 2011.**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-OAR-2008-0638, by one of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

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

- *E-mail:* Mr. Guy Donaldson at donaldson.guy@epa.gov. Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.

- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), 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 ID No. EPA-R06-OAR-2008-0638. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

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 Planning Section (6PD-L), 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 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page 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 Texas 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: Ms. Carrie Paige, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue,

Suite 700, Dallas, Texas 75202–2733; telephone (214) 665–6521; fax number 214–665–7263; e-mail address paige.carrie@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us,” and “our” means EPA.

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I. Background

A. What are the National Ambient Air Quality Standards?

Section 109 of the Act requires EPA to establish NAAQS for pollutants that “may reasonably be anticipated to endanger public health and welfare,” and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety, and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants: Carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local governments with the minimum air quality levels they must meet to comply with the Act. Also, these standards provide information to residents of the United States about the air quality in their communities.

B. What is a SIP?

The SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state, to ensure that the state meets the NAAQS. The SIP is required by section 110 and

other provisions of the Act. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the federally enforceable SIP. Another important aspect of the SIP is to ensure that emissions from within the state do not have certain prohibited impacts upon the ambient air in other states through interstate transport of pollutants. This SIP requirement is specified in section 110(a)(2)(D) of the CAA. Pursuant to that provision, each state’s SIP must contain provisions adequate to prevent, among other things, emissions that interfere with measures required to be included in the SIP of any other state to prevent significant deterioration of air quality in any other state. Such EPA-approved SIPs protect air quality primarily by addressing air pollution at its point of origin.

C. What is the background for this rulemaking?

Under sections 110(a)(1) and (2) of the Act, states are required to submit SIPs that provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of the NAAQS, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the specific infrastructure elements that must be incorporated into the SIPs, including for example, requirements for air pollution control measures, and monitoring that are designed to assure attainment and maintenance of the NAAQS. Table 1, listing all 14 infrastructure elements, is included in Section D of this proposed rulemaking.¹ EPA refers to the requirements of section 110(a)(2)(A)–(C), (D)(ii), (E)–(H), and (J)–(M) as the “infrastructure” SIPs. Additionally, EPA refers to the requirements of section 110(a)(2)(D)(i) as the “interstate transport” SIPs. EPA provided separate guidance to states on

¹Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172 of the CAA. These elements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D Title I of the CAA. Therefore, this action does not cover these specific SIP elements.

each type of SIP, infrastructure and interstate transport, and these actions are on separate tracks and timelines.

1. Section 110(a)(1) and (2) Infrastructure SIP Elements

On July 18, 1997, we published new and revised NAAQS for ozone (62 FR 38856) and PM (62 FR 38652). For ozone, we set an 8-hour standard of 0.08 parts per million (ppm) to replace the 1-hour standard of 0.12 ppm. For PM we set a new annual and a new 24-hour NAAQS for particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (denoted PM_{2.5}). The annual PM_{2.5} standard was set at 15 micrograms per cubic meter (µg/m³). The 24-hour PM_{2.5} standard was set at 65 µg/m³. On October 17, 2006, we published revised standards for PM (71 FR 61144). For PM_{2.5} the annual standard of 15 µg/m³ was retained and the 24-hour standard was revised to 35 µg/m³. For PM₁₀ the annual standard was revoked and the 24-hour standard (150 µg/m³) was retained. For more information on these standards please see the 1997 and 2006 **Federal Register** notices (62 FR 38856, 62 FR 38652, and 71 FR 61144).

Thus states were required to submit such SIPs for the 1997 8-hour ozone and PM_{2.5} NAAQS to EPA no later than June 2000.² However, intervening litigation over the 1997 8-hour ozone and PM_{2.5} NAAQS created uncertainty about how to proceed and many states did not provide the required “infrastructure” SIP submission for these newly promulgated NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA’s failure to issue findings of failure to submit related to the infrastructure requirements for the 1997 8-hour ozone and PM_{2.5} NAAQS. EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA’s determinations pursuant to section 110(k)(1)(B) of the Act as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS by December 15, 2007. Subsequently, EPA received an

²EPA issued a revised 8-hour ozone standard on March 27, 2008 (73 FR 16436). On September 16, 2009, the EPA Administrator announced that EPA would take rulemaking action to reconsider the 2008 primary and secondary ozone NAAQS. On January 19, 2010, EPA proposed to set different primary and secondary ozone standards than those set in 2008 to provide requisite protection of public health and welfare, respectively (75 FR 2938). The final reconsidered ozone NAAQS have yet to be promulgated. This rulemaking does not address the 2008 ozone standard.

extension of the date to complete this **Federal Register** notice until March 17, 2008, based upon agreement to make the findings with respect to submissions made by January 7, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency had received from each state as of January 7, 2008. With regard to the 1997 PM_{2.5} NAAQS, EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) of the Act as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 PM_{2.5} NAAQS by October 5, 2008.

On March 27, 2008, and October 22, 2008, we published findings concerning whether states had made the 110(a)(2) submissions for the 1997 ozone (73 FR 16205) and PM_{2.5} standards (73 FR 62902). In the March 27, 2008 action, we found that Texas had not made the necessary submission for ozone. This finding established a 24-month deadline for the promulgation by EPA of a Federal Implementation Plan (FIP) addressing these specific SIP elements for ozone, in accordance with section 110(c)(1) of the Act. On April 4, 2008 the Texas Commission on Environmental Quality (TCEQ) submitted a letter stating that Texas has addressed any potential infrastructure issues associated with the 1997 ozone and PM_{2.5} NAAQS and fulfilled its infrastructure SIP obligations. An enclosure to the letter provided information on Texas SIP provisions supporting the 110(a)(2) elements for the 1997 ozone and PM_{2.5} standards. Thus, in the October 22, 2008 action, we found that Texas had made a complete submission that provides for the basic program elements specified in section 110(a)(2) of the Act necessary to implement the 1997 PM_{2.5} NAAQS.

On October 2, 2007, we issued "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards," Memorandum from William T. Harnett, Director, Air Quality Policy Division (AQPD), Office of Air Quality Planning and Standards (OAQPS).³ On September 25, 2009, we issued "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS),"

Memorandum also from William T. Harnett, Director, AQPD, OAQPS. Each of these guidance memos addresses the SIP elements found in 110(a)(2). In each of these guidance memos, the guidance states that to the extent that existing SIPs already meet the requirements, states need only certify that fact to us.

On November 23, 2009, the TCEQ submitted a letter to fulfill its infrastructure SIP obligations for the 2006 PM_{2.5} NAAQS. An enclosure to the letter provided information on Texas SIP provisions supporting the 110(a)(2) elements for the 2006 PM_{2.5} standards. The submittal became complete by operation of law.

Additional information: EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and PM_{2.5} NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.⁴ Those commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); and (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA ("director's discretion"). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs ("minor source NSR"); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with

current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIP submittals for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS submissions from Texas.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that "in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities." EPA further explained, for informational purposes, that "EPA plans to address such State regulations in the future." EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and PM_{2.5} NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on these infrastructure SIP submittals for Texas.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the

³ This and any other guidance documents referenced in this action are in the docket for this rulemaking.

⁴ See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA-R05-OAR-2007-1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)" and that these SIPs are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as "infrastructure SIPs." This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as "nonattainment SIP" submissions required to address the nonattainment planning requirements of part D, "regional haze SIP" submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section

110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.⁵ Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.⁶

Notwithstanding that section 110(a)(2) provides that "each" SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).⁷ This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general "infrastructure SIP" for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter "interstate transport" provisions within section 110(a)(2) and worked with states

⁵ For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

⁶ For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, e.g., "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule," 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase "contribute significantly to nonattainment").

⁷ See, e.g., *Id.*, 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.⁸ This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.⁹

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.*, the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section

⁸ EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 PM_{2.5} NAAQS. See, "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards," from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

⁹ For example, implementation of the 1997 PM_{2.5} NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements “as applicable.” In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and PM_{2.5} NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS.¹⁰ Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the “infrastructure” elements for SIPs, which it further described as the “basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.”¹¹ As further identification of these basic structural SIP requirements, “attachment A” to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended “to constitute an interpretation of” the requirements, and was merely a “brief description of the required elements.”¹² EPA also stated its belief that with one exception, these requirements were “relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.”¹³ For the

one exception to that general assumption, however, *i.e.*, how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 PM_{2.5} NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State’s submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State’s SIP for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 PM_{2.5} NAAQS.¹⁴ In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS, but were germane to these SIP submissions for the 2006 PM_{2.5} NAAQS, *e.g.*, the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and PM_{2.5} NAAQS.

Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director’s discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director’s discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA’s 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the

and may be addressed at other times and by other means.

¹⁴ See, “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS),” from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the “2009 Guidance”).

NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA’s proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIP submittals for Texas.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of “implementation, maintenance, and enforcement” of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA’s 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 PM_{2.5} NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a “SIP call” whenever the Agency determines that a state’s SIP is substantially inadequate to attain or

¹⁰ See, “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards,” from William T. Harnett, Director, Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the “2007 Guidance”).

¹¹ *Id.*, at page 2.

¹² *Id.*, at attachment A, page 1.

¹³ *Id.*, at page 4. In retrospect, the concerns raised by commenters with respect to EPA’s approach to some substantive issues indicates that the statute is not so “self explanatory,” and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs

maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.¹⁵ Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.¹⁶ Significantly, EPA's determination that an action on the infrastructure SIP submittal is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.¹⁷

2. 110(a)(2)(D)(i) Interstate Transport SIP Elements

Section 110(a)(2)(D)(i) pertains to interstate transport of certain emissions. On August 15, 2006, EPA issued its "Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards" (2006 Guidance). EPA developed the 2006 Guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone standards and the 1997 PM_{2.5} standards. As identified in the 2006 Guidance, the "good neighbor"

provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; and (4) interfere with efforts to protect visibility in other states.

On May 1, 2008, we received a SIP revision from the State of Texas intended to address the requirements of section 110(a)(2)(D)(i) for both the 1997 8-hour ozone and 1997 PM_{2.5} standards. On November 23, 2009 we received a SIP revision¹⁸ from the State intended to address the requirements of section 110(a)(2)(D)(i) for the 2006 PM_{2.5} NAAQS. In this rulemaking, we are addressing only the requirement that pertains to preventing sources in Texas from emitting pollutants that will interfere with measures required to prevent significant deterioration of air quality in other states.¹⁹ In its submission, Texas indicated that its current New Source Review (NSR) SIP is adequate to prevent such interference.

3. Revisions to the Texas PSD SIP

To meet the infrastructure requirements of section 110(a)(2)(C) of the Act for the 1997 ozone standard, the EPA believes the State must have updated its rules for PSD to treat NO_x as a precursor to ozone (70 FR 71612, November 29, 2005). PSD rules to treat NO_x as a precursor to ozone are also required to meet the third interstate transport prong, interference with provisions to prevent significant

deterioration of air quality in other states.

On March 11, 2011, the TCEQ submitted two revisions to its NSR program to meet the requirements of the "NSR Reform" published on December 31, 2002 (67 FR 80186), the 1997 8-hour ozone NAAQS, and the revocation of the 1-hour ozone NAAQS. On May 26, 2011, the TCEQ submitted a correction to the March 2011 revisions. The March 11, and May 26, 2011 submissions include, but are not limited to, revisions that provide for NO_x to be treated as a precursor to ozone formation in the state's preconstruction permitting program for PSD, found in Title 30 of the Texas Administrative Code, Chapter 116, Section 12 (denoted 30 TAC 116.12).²⁰ We are proposing action on a limited number of revisions to the PSD program that implement the provisions for NO_x as a precursor. At this time, EPA is not taking action on other portions of the NSR SIP revisions submitted by Texas together with the PSD revision. EPA intends to act on the other revisions submitted together with the PSD program revisions at a later time.

4. Greenhouse Gas (GHG) Component of PSD Programs

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part are distinct from one another, impact today's proposed action on the Texas SIP. Four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,²¹ the "Johnson Memo Reconsideration,"²² the "Light-Duty Vehicle Rule,"²³ and the "Tailoring Rule."²⁴ Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on

¹⁵ EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision," 74 FR 21639 (April 18, 2011).

¹⁶ EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

¹⁷ EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

¹⁸ This is the same submittal that addresses the 110(a)(2) infrastructure SIP elements for the 2006 PM_{2.5} NAAQS.

¹⁹ EPA published a finding on April 25, 2005 (70 FR 21147) that all states had failed to submit SIPs addressing interstate transport for the 1997 ozone and PM_{2.5} standards, as required by section 110(a)(2)(D)(i). EPA proposed a FIP on August 2, 2010 (75 FR 45210) to limit emissions of ozone precursors and PM that contribute significantly to nonattainment of the 1997 ozone and 1997 and 2006 PM NAAQS in other states and interfere with maintenance of these three NAAQS in other states. EPA finalized the FIP on July 6, 2011; known as the Cross-State Air Pollution Rule, it requires that Texas (and 26 other states in the eastern half of the United States) must significantly improve air quality by reducing power plant emissions that cross state lines and contribute to ground-level ozone and fine particle pollution in other states. See 76 FR 48208 (published August 8, 2011) and <http://www.epa.gov/crossstaterule>.

²⁰ The Texas Administrative Code (TAC) is a compilation of all state agency rules in Texas. Each title represents a subject category and related agencies are assigned to the appropriate title; Title 30 is environmental quality and contains the TCEQ rules.

²¹ "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

²² "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

²³ "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

²⁴ Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

January 2, 2011, subjected GHGs emitted from stationary sources to permitting requirements for PSD; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

However, the approved Texas SIP contained errors that resulted in its failure to address, or provide adequate legal authority for, the implementation of a GHG PSD program in Texas. On this basis, on December 30, 2010, EPA corrected its previous full approval of Texas's PSD program to be a partial approval and partial disapproval (75 FR 82430). Further, as required following the partial disapproval, EPA in this same action promulgated a FIP to establish a PSD permitting program in Texas for GHG-emitting sources (75 FR 82430). EPA took these actions through interim final rulemaking, effective upon

publication, to ensure the availability of a permitting authority—EPA—in Texas for GHG-emitting sources when they became subject to PSD on January 2, 2011. The interim FIP allowed those sources to proceed with plans to construct or expand. The interim rule expired on April 30, 2011 and is replaced by the final rule (76 FR 25178, May 3, 2011).

As we discuss further in this proposal and in the TSD, Texas currently does not have adequate legal authority to address the new GHG PSD permitting requirements at or above the levels of emissions set in the Tailoring Rule, or at other appropriate levels, and thus, the Texas SIP does not satisfy portions of elements within the infrastructure and transport requirements. EPA's disapproval here does not engender an additional statutory obligation, because EPA has already promulgated a FIP for the Texas PSD program to address permitting GHGs at or above the Tailoring Rule thresholds (76 FR 25178).

5. PM_{2.5} SIP Revisions

To implement section 110(a)(2)(C) for the 1997 PM_{2.5} standard, states must provide revisions to implement the PM_{2.5} standard due May 16, 2011 under 73 FR 28321.²⁵ On April 20, 2011, the TCEQ adopted revisions to the Texas SIP to amend their PSD and nonattainment NSR programs to implement the PM_{2.5} NAAQS. These revisions became effective and enforceable by the state on May 12, 2011. The state submitted these changes to EPA as a SIP revision on May 19, 2011. EPA will act on this submission in a separate rulemaking.

D. What elements are required under Section 110(a)(2)?

Pursuant to the October 2, 2007, EPA guidance for addressing the SIP infrastructure elements required under section 110(a)(2) for the 1997 ozone and 1997 and 2006 PM_{2.5} NAAQS, there are 14 essential components that must be in the SIP. These are listed in Table 1 below.

TABLE 1—SECTION 110(a)(2) ELEMENTS REQUIRED IN SIPS

Clean Air Act citation	Brief description
Section 110(a)(2)(A)	Enforceable emission limits and other control measures.
Section 110(a)(2)(B)	Ambient air quality monitoring/data system.
Section 110(a)(2)(C)	Program for enforcement of control measures.
Section 110(a)(2)(D)	International and interstate transport.
Section 110(a)(2)(E)	Adequate resources.
Section 110(a)(2)(F)	Stationary source monitoring system.
Section 110(a)(2)(G)	Emergency power.
Section 110(a)(2)(H)	Future SIP revisions.
Section 110(a)(2)(J) ²⁶	Consultation with government officials.
Section 110(a)(2)(J)	Public notification.
Section 110(a)(2)(J)	Prevention of significant deterioration (PSD) and visibility protection.
Section 110(a)(2)(K)	Air quality modeling/submission of such data.
Section 110(a)(2)(L)	Permitting fees.
Section 110(a)(2)(M)	Consultation/participation by affected local entities.

II. What action is EPA proposing?

A. Section 110(a)(1) and (2)

The EPA is proposing to partially approve and partially disapprove the Texas SIP submittals that identify where and how the 14 basic infrastructure elements are in the EPA-approved SIP specified in section 110(a)(2) of the Act. The Texas infrastructure SIP submittals do not include revisions to the SIP, but document how the current Texas SIP already includes the required infrastructure elements. In today's action, we are proposing to determine and approve that the following section

110(a)(2) elements are contained in the current Texas SIP and provide the infrastructure for implementing the 1997 ozone and 1997 and 2006 PM_{2.5} standards: Emission limits and other control measures (section 110(a)(2)(A)); ambient air quality monitoring/data system (section 110(a)(2)(B)); the program for enforcement of control measures, except for the portion that addresses GHGs (section 110(a)(2)(C)); international and interstate pollution abatement, except for the portion that addresses GHGs (section 110(a)(2)(D)(ii)); adequate resources (section 110(a)(2)(E)); stationary source

monitoring system (section 110(a)(2)(F)); emergency power (section 110(a)(2)(G)); future SIP revisions (section 110(a)(2)(H)); consultation with government officials (section 110(a)(2)(J)); public notification (section 110(a)(2)(J)); PSD and visibility protection, except for the PSD portion that addresses GHGs (section 110(a)(2)(J)); air quality modeling/data (section 110(a)(2)(K)); permitting fees (section 110(a)(2)(L)); and consultation/participation by affected local entities (section 110(a)(2)(M)). In addition, we are proposing to determine that portions of three section 110(a)(2) elements are

²⁵ The Federal Register action at 73 FR 28321 was published May 16, 2008.

²⁶ Section 110(a)(2)(I) is omitted from the list. Section 110(a)(2)(I) pertains to the nonattainment

planning requirements of part D, Title I of the Act. This section is not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after

promulgation of a new or revised NAAQS, but are due at the time the nonattainment area plan requirements are due pursuant to section 172. Thus this action does not cover section 110(a)(2)(I).

not contained in the current Texas SIP and thus do not provide the infrastructure for implementing the 1997 ozone and 1997 and 2006 PM_{2.5} standards. We are proposing to disapprove the GHG portion of the element addressing the program for enforcement of control measures (section 110(a)(2)(C)); the GHG portion of the element addressing international and interstate pollution abatement (section 110(a)(2)(D)(ii)); and the GHG portion of the element addressing PSD (section 110(a)(2)(J)).

We are also proposing to approve portions of the May 1, 2008 (the Texas Interstate Transport SIP) and the November 23, 2009 submissions from Texas, demonstrating that Texas has adequately addressed one of the four required elements (or prongs) of the CAA section 110(a)(2)(D)(i), the element that requires that the SIP prohibit air emissions from sources within a state from interfering with measures required to prevent significant deterioration of air quality in any other state.²⁷ We are proposing to determine that emissions from sources in Texas do not interfere with measures to prevent significant deterioration of air quality in any other state for the 1997 8-hour ozone NAAQS or the 1997 and 2006 PM_{2.5} NAAQS (CAA section 110(a)(2)(D)(i)(II)), except for the portion that addresses GHGs. We are proposing to disapprove the portion of the Texas Interstate Transport SIP element that prohibits GHG emissions from sources within Texas from interfering with measures required to prevent significant deterioration of air quality in any other state (section 110(a)(2)(D)(i)). As noted previously in this action, we are not addressing the three remaining prongs of section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS, that pertain to prohibiting air emissions within Texas from: (1) Significantly contributing to nonattainment in any other state, (2) interfering with maintenance of the relevant NAAQS in any other state and (3) interfering with measures required to protect visibility in any other state. We will take action on the three remaining prongs of section 110(a)(2)(D)(i) for these three NAAQS, which addresses interstate transport, in separate rulemakings (see footnote 19).

In conjunction with our proposed finding that the Texas SIP meets the section 110(a)(1) and (2) infrastructure and interstate transport SIP elements

listed above for the three NAAQS, we are also proposing to approve severable²⁸ portions of the SIP revisions submitted by the TCEQ to EPA on March 11, 2011 and a correction submitted on May 26, 2011. These portions contain rule revisions by TCEQ to: (1) Add PSD to the title of the section, such that the section will address Nonattainment and PSD Review Definitions; (2) add the definition of Federally Regulated NSR Pollutant, which identifies volatile organic compounds (VOCs) and NO_x as precursors in all attainment and unclassifiable areas; and (3) revise the section title, so the definitions for *Major stationary source*, *Major modification*, and the table identifying the *Significant Level* for emission thresholds for major sources and major modifications will apply under PSD. These revisions addressing PSD also specify that a major source that is major for VOCs or NO_x shall be considered major for ozone and provide that the significant emission threshold for ozone (identified as VOC, NO_x) is 40 tons per year (tpy). The actions proposed herein are described in greater detail in Section III of this rulemaking and in the TSD. In this proposal, EPA is not taking action on other submitted NSR revisions; EPA intends to act on the other NSR SIP revisions at a later date.

B. Why is EPA proposing a partial approval, partial disapproval?

Section 110(k)(3) of the Act states that EPA may partially approve and partially disapprove a SIP submittal if it finds that only a portion of the submittal meets the requirements of the Act. We believe that the Texas SIP meets a majority of the requirements of section 110(a)(2) of the Act and that specific portions of three elements of section 110(a)(2) are not met.²⁹ Because the portions proposed for disapproval are independent from those proposed for approval, we believe that the Texas Infrastructure SIP can be partially approved and partially disapproved.

C. What are the implications of a partial approval, partial disapproval?

Enforcement of a state regulation (or rule) before and after it is incorporated into the federally approved SIP is

²⁸ By severable, we mean that the portions of the SIP revision that address NO_x as a precursor can be implemented independently of the remaining portions of the submittal, without affecting the stringency of the submitted rules. In addition, the remaining portions of the submittal are not necessary for approval of the provisions addressing NO_x as a precursor.

²⁹ The three elements refer to the infrastructure and interstate transport SIP elements discussed in section II above.

primarily a state responsibility. However, after the rule is federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the Act. If a state rule is disapproved, it is not incorporated into the federally approved SIP, and is not enforceable by EPA or by citizens under section 304. Disapproval of any of the Texas infrastructure SIP elements would not trigger sanctions under section 179 of the Act, because the submittals are not required by part D of Title I of the Act and are not required by a call for a SIP revision under section 110(k)(5) of the Act. However, as noted earlier, EPA published a finding on March 27, 2008 (73 FR 16205) regarding whether or not states had made the section 110(a)(2) submissions for ozone and found that Texas had failed to make a complete submission. This finding started a 24-month deadline for promulgation by EPA of a FIP. This FIP obligation will be met for the 110(a)(2) elements that EPA has proposed approval, if, after considering public comment, EPA finalizes the approval. For the proposed disapproved infrastructure elements (the portions of section 110(a)(2)(C), section 110(a)(2)(D)(ii), and section 110(a)(2)(J) described in section III of this action), EPA remains obligated to implement a FIP if disapproval is finalized. EPA's disapproval here, however, does not engender an additional statutory obligation, because EPA has already promulgated a FIP for the Texas PSD program to address permitting GHGs at or above the Tailoring Rule thresholds (76 FR 25178). As noted earlier, we will take action on the remaining three prongs of section 110(a)(2)(D)(i), which addresses interstate transport, in a separate rulemaking.

D. SIP Revisions to 30 TAC 101.1

As described elsewhere in this rulemaking, EPA is acting on revisions to 30 TAC 116.12 submitted on March 11, 2011. One of the revisions upon which we are taking action, i.e., Table I under the definition for Major modification at 30 TAC 116.12(18)(A), makes a reference to 30 TAC 101.1(70).³⁰ Since the cross-referenced paragraphs must correlate, we had to broaden our review to include revisions to several paragraphs in 30 TAC 101.1. Thus, EPA is proposing to approve the following portions of the March 11, 2011 SIP revisions: (1) The non-

³⁰ Footnote 1 in Table I under 30 TAC 116.12(18) reads: Texas nonattainment area designations as defined in 30 TAC 101.1(70) of this title.

²⁷ As noted in Section I.C.2 of this action, the May 1, 2008 submittal addresses the 1997 ozone and PM_{2.5} standards; it does not address the 2006 PM_{2.5} standard. The November 23, 2009 submittal addresses the 110(a)(2) infrastructure and interstate transport elements for the 2006 PM_{2.5} NAAQS.

substantive revisions to the definition of *Nonattainment area* at 30 TAC 101.1(70) to reflect the current status of ozone nonattainment areas in Texas as identified in 40 CFR part 81 and make the definition consistent with changes proposed for 30 TAC 116.12(18)(A); (2) the non-substantive revisions to the definition of *Reportable quantity* at 30 TAC 101.1(88) to make the definition consistent with changes proposed for 30 TAC 101.1(70); and (3) the non-substantive revisions to the definition of *Maintenance area* at 30 TAC 101.1(54) to reflect the current status of maintenance areas in Texas as identified in 40 CFR 81. We are also proposing to approve non-substantive revisions to 30 TAC 101.1(115) submitted on May 26, 2011, which make the definition of *Volatile organic compound* consistent with the EPA's definition for VOCs, as amended January 21, 2009 (74 FR 3437)³¹ and codified at 40 CFR 51.100(s)(1).

III. How has Texas addressed the elements of Section 110(a)(2)?

The Texas submittals address the elements of Section 110(a)(2) as described below. We provide a more detailed review and analysis of the Texas infrastructure and transport SIP elements in the TSD.

Enforceable emission limits and other control measures, pursuant to section 110(a)(2)(A): Section 110(a)(2)(A) requires that all measures and other elements in the SIP be enforceable. This provision does not require the submittal of regulations or emission limits developed specifically for attaining the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} standards. Those regulations are due later as part of attainment demonstrations. Additionally, as explained earlier (see footnote 1), EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1). Nevertheless, Texas has included some SIP provisions originally submitted in response to part D in its submission documenting its compliance with the infrastructure requirements of section 110(a)(1) and (2). Texas has continually updated the elements of its SIP revisions submitted in response to the infrastructure requirements of section 110(a)(2) and the nonattainment requirements of part D. For the purposes of this action, EPA is reviewing any

rules originally submitted in response to part D solely for the purposes of determining whether they support a finding that the state has met the basic infrastructure requirements under section 110(a)(2).

The Texas Clean Air Act (TCAA), which named the Texas Air Control Board (TACB) as the state's air pollution control agency, provided enforcement authority to the TACB. In its approval of the Texas 1972 SIP, EPA approved the State's Section V of the SIP Narrative as showing that the Board had the legal authority to implement and enforce the SIP (37 FR 10842, 10895, May 31, 1972). Later, in 1981 EPA approved a replacement of Section V into the SIP as support showing the Board continued to have the legal authority to implement and enforce the SIP.³² The State has continued to submit updates in its SIP Narratives concerning its legal authorities.³³ Pursuant to Acts 1989, 71st Legislature, chapter 678, Section 1, effective September 1, 1989, the TCAA was codified as Chapter 382 of the Texas Health and Safety Code (THSC). The TACB was abolished in 1993 and its powers, duties, responsibilities and functions were transferred to the Texas Natural Resource Conservation Commission, which was renamed in 2001, to the Texas Commission on Environmental Quality (TCEQ). The Texas Water Code (TWC) under Section 5.013 provides the TCEQ with authority over the responsibilities assigned by the THSC (which may be cited as the TCAA). The THSC under Section 382.017 authorizes the TCEQ to adopt rules for the control of air pollution.

The TCEQ has promulgated rules to limit and control emissions of among other things, PM, sulfur compounds (including sulfur dioxide or SO₂), nitrogen compounds (including NO_x), and VOCs.³⁴ These rules include emission limits, control measures, programs for banking and trading of emissions, emission reduction incentive programs, permits, fees, and compliance schedules and are found within 30 TAC, chapters 101, 106, and 111–118.

EPA promulgated a partial approval and partial disapproval of the Texas provisions regarding excess emissions

occurring during startup, shutdown, and malfunction (SSM) of operations at a facility on November 10, 2010 (75 FR 68989).³⁵ In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states may have SSM SIP provisions which are contrary to the Act and inconsistent with existing EPA guidance,³⁶ and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible. Similarly, this proposed action does not include a review of and also does not propose to take any action to approve or disapprove any existing SIP rules with regard to director's discretion or variance provisions. EPA believes that a number of SIPs have such provisions which are contrary to the Act and not consistent with existing EPA guidance (52 FR 45044, November 24, 1987)³⁷ and the Agency plans to take action in the future to address such SIP regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision in its SIP which is contrary to the Act and inconsistent with EPA guidance to take steps to correct the deficiency as soon as possible.

A detailed list of the applicable rules at 30 TAC, listed above, is provided in the TSD. The Texas SIP contains enforceable emission limits and other control measures, which are in the federally enforceable SIP. EPA is proposing to determine that the Texas SIP meets the requirements of section 110(a)(2)(A) of the Act with respect to

³⁵ EPA approved the provisions that clarify existing reporting requirements; clarify that the rule does not allow exemptions from compliance with Federal requirements, including any requirements in the federally-approved SIP; provide for an affirmative defense from unplanned startup, shutdown, or maintenance (*i.e.*, malfunctions), consistent with the CAA as interpreted by EPA; and provide for a corrective action plan and written notification concerning excessive emission events. EPA disapproved the provisions that provide for an affirmative defense against civil penalties for excess emissions during planned maintenance, startup, or shutdown activities and related provisions that contain non-severable cross-references to the affirmative defense provision. For more information, see 75 FR 68989.

³⁶ "State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown," Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, dated September 20, 1999.

³⁷ The section addressing exemptions and variances is found on p. 45109 of the 1987 rulemaking.

³² See 46 FR 61124, published December 15, 1981.

³³ For examples, see the Houston Attainment Plan (71 FR 52670, September 6, 2006), the Dallas/Fort Worth Attainment Plan (74 FR 1903, January 14, 2009), and the Beaumont/Port Arthur Redesignation (75 FR 64675, October 20, 2010).

³⁴ NO_x and VOCs are precursors to ozone. PM can be emitted directly and secondarily formed; the latter is the result of NO_x and SO₂ precursors combining with ammonia to form ammonium nitrate and ammonium sulfate.

³¹ The state's rule at 30 TAC 101.1(115) cites 74 FR 3441. EPA identifies a **Federal Register** action by the first page of the rulemaking, thus our reference to 74 FR 3437.

the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS.

Ambient air quality monitoring/data analysis system, pursuant to section 110(a)(2)(B): Section 110(a)(2)(B) requires SIPs to include provisions for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. The TCEQ operates and maintains a state-wide network of air quality monitors; data are collected, results are quality assured and the data are submitted to EPA's Air Quality System³⁸ on a regular basis. The Texas Statewide Air Quality Surveillance Network was approved by EPA (37 FR 10842, 10895) and revised on March 7, 1978 (43 FR 9275). Texas's air quality surveillance network consists of stations that measure ambient concentrations of the criteria pollutants, including ozone³⁹ and PM_{2.5}. EPA also approved Texas's enhanced ambient air quality monitoring network of Photochemical Assessment Monitoring Stations (PAMS) on October 4, 1994 (59 FR 50502).⁴⁰ The TCEQ Web site provides the ozone and PM_{2.5} monitor locations and current and historical data, including ozone design values for current⁴¹ and past trienniums. On June 30, 2010, TCEQ submitted its 2010 Annual Air Monitoring Network Plan (AAMNP) that addresses each of the criteria pollutants, including 8-hour ozone and PM_{2.5} and thus allows the state to measure its air quality for compliance with the 1997 ozone and 1997 and 2006 PM_{2.5} NAAQS; EPA approved the AAMNP on December 23, 2010.⁴²

In summary, Texas meets the requirements to establish, operate, and maintain an ambient air monitoring network, collect and analyze the

³⁸ The Air Quality System (AQS) is EPA's repository of ambient air quality data. AQS stores data from over 10,000 monitors, 5,000 of which are currently active. State, Local and Tribal agencies collect the data and submit it to AQS on a periodic basis.

³⁹ With the exception of maintenance and malfunctions, the ozone monitors are constantly running and recording one-hour ozone averages. Texas submits the hourly data into AQS, where the 8-hour averages are computed. Texas also computes the 8-hour averages and posts the data at http://www.tceq.state.tx.us/cgi-bin/compliance/monops/8hr_monthly.pl.

⁴⁰ The PAMS network undergoes review and approval by EPA whenever there are significant changes to the network. A copy of the most recent approval, dated October 30, 2009, is in the docket for this rulemaking.

⁴¹ The current design values reflect the 2008–2010 ozone season data.

⁴² A copy of our approval letter is in the docket for this rulemaking. At the time of this writing, the review of the 2011 AAMNP has not been completed.

monitoring data, and make the data available to EPA upon request. EPA is proposing to find that the current Texas SIP meets the requirements of section 110(a)(2)(B) with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS.

*Program for enforcement of control measures and regulation of the modification and construction of stationary sources * * * including a permit program, pursuant to section 110(a)(2)(C):* The THSC and the TWC, as stated previously, provide the state with enforcement authority for rules adopted under the TCAA. The rules in 30 TAC 101 provide for enforcement of emissions inventories. The rules in 30 TAC 106, 112, 115 and 117 provide for allowable emission rates, and control, monitoring and testing requirements; they clarify the boundaries beyond which regulated entities in Texas can expect enforcement action.

To meet the requirement for having a program for the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required by Parts C and D, generally, the State is required to have SIP-approved PSD, Nonattainment, and Minor NSR permitting programs adequate to implement the 1997 8-hour ozone and the 1997 and 2006 PM_{2.5} NAAQS. As discussed previously, we are not evaluating nonattainment-related provisions, such as the nonattainment NSR program required by part D in 110(a)(2)(C) and measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs for these three NAAQS because these submittals are required beyond the date (3 years from NAAQS promulgation) that section 110 infrastructure submittals are required.

PSD programs apply in areas that are meeting the NAAQS or are unclassifiable, referred to as areas in attainment. PSD applies to new major sources and major modifications at existing sources. The Texas PSD SIP (found at 30 TAC 116, Division 6) was initially approved on June 24, 1992 (57 FR 28093). Subsequent revisions to the Texas PSD program were approved into the SIP on September 9, 1994 (59 FR 46556); August 19, 1997 (62 FR 44083); September 18, 2002 (67 FR 58697); July 22, 2004 (69 FR 43752); March 20, 2009 (74 FR 11851); and September 15, 2010 (75 FR 55978). As noted earlier in this proposal, part D of the Act addresses nonattainment area provisions, which are not governed by the three-year submission deadline for section

110(a)(2) and thus will not be addressed in this action.⁴³

EPA's PSD permitting regulations are found at 40 CFR 51.166 and 40 CFR 52.21. PSD requirements for SIPs are found in 40 CFR 51.166 and 40 CFR Part 51 Appendix W. Similar PSD requirements for SIPs incorporating EPA's regulations by reference are found in 40 CFR 52.21. To meet the requirements of 110(a)(2)(C) for the 1997 ozone standard, EPA believes the State must have updated its PSD rules to treat NO_x as a precursor for ozone (70 FR 71612, November 29, 2005). On March 11, 2011, Texas submitted the provisions for NO_x as a precursor consistent with EPA's November 29, 2005, Phase 2 rule for the 1997 8-hour ozone NAAQS (70 FR 71612) as part of its revisions to address NSR Reform. EPA proposes to approve the following portions of the March 11, 2011 SIP revisions to 30 TAC 116.12: (1) The non-substantive revision to the title of 30 TAC 116.12, changing the title from Nonattainment Review Definitions to Nonattainment and Prevention of Significant Deterioration Review Definitions; (2) the non-substantive and administrative revisions to the introductory paragraph at 30 TAC 116.12; (3) the substantive revisions that add *Federally Regulated NSR pollutant* as a new definition⁴⁴ at 30 TAC 116.12(14); (4) the non-substantive changes to rename and renumber the definition of Major facility/stationary source at 30 TAC 116.12(10) to *Major stationary source* at 30 TAC 116.12(17) and provide minor editorial revisions; (5) the substantive changes to the definition of Major stationary source at 30 TAC 116.12(17) to make the definition consistent with 40 CFR 51.166(b)(1); (6) the non-substantive changes to renumber the definition of Major modification at 30 TAC 116.12(11) to 30 TAC 116.12(18) and provide minor editorial revisions to Table I (Major Source/Major Modification Emission Thresholds), including non-substantive edits to footnotes 1–3 in Table I; (7) the substantive changes to the definition of Major modification at 30 TAC 116.12(18) to make the definition consistent with 40 CFR 51.166(b)(1) and (2); and (8) the substantive changes that remove footnotes 6 and 7 from Table I under 30 TAC 116.12(18)(A) to make the Table consistent with the *South Coast* decision (*South Coast Air Quality Management District, et al., v. EPA*, 472

⁴³ See footnote 1.

⁴⁴ Texas did not address GHGs under the definition for Federally Regulated NSR pollutant. See discussion in section I.C.4 of this action.

F.3d 882 (DC Cir. 2006)).⁴⁵ As noted earlier, 30 TAC 116.12 previously addressed Nonattainment Review Definitions and identified NO_x as a precursor, but only applied to nonattainment NSR. By revising the title of this subchapter to include Nonattainment and Prevention of Significant Deterioration Review Definitions, the submitted revisions provide that NO_x is an ozone precursor for PSD and thus address that aspect of the requirements at 110(a)(2)(C) for the 1997 ozone standard.

The March 11, 2011 revisions to the definitions in the Texas rules for “major modification” and “major stationary source” meet the Federal definition in 40 CFR 51.166(b)(1) to identify a major source of NO_x as a major source for ozone. The March 11, 2011 revisions to the Texas rules also meet the Federal definition in 40 CFR 51.166(b)(49) for inclusion of NO_x as an ozone precursor. The March 11, 2011 revisions to the emission rate for ozone in 30 TAC 116.12(18) under Table I for Major Source/Major Modification Emission Thresholds, under the column for Significant Level in the Texas rules meet the Federal requirements in 40 CFR 51.166(b)(23)(i), which establishes these emission thresholds as 40 tpy. Because of their consistency with 40 CFR part 51, which provides the requirements for an approvable PSD program, EPA believes these revisions are consistent with 110(l) and the revisions would not interfere with any applicable CAA requirement concerning attainment of any applicable standard. Therefore, EPA is proposing to approve these revisions as meeting the requirements of section 110 of the Act and 40 CFR 51.166 for establishing NO_x emissions as a precursor for ozone.

The revisions to 30 TAC 116.12 and EPA’s evaluation of these revisions are discussed in greater detail in the TSD. The provisions that address NO_x as a precursor are severable from the March 11, 2011 submittal and EPA is proposing to approve these provisions in today’s action.

Permits that are major for Ozone: EPA’s PSD regulations require an ambient impact analysis for ozone for proposed major stationary sources and major modifications to obtain a PSD permit (40 CFR 51.166(k), (l) and (m) and 40 CFR 52.21(k), (l) and (m)). The Texas rules at 30 TAC 116.160–.163 meet these requirements for PSD and were approved into the SIP on June 24, 1992 (57 FR 28093), as revised September 9, 1994 (59 FR 46556),

September 27, 1995 (60 FR 49781), August 19, 1997 (62 FR 44083), July 22, 2004 (69 FR 43752); March 20, 2009 (74 FR 11851); and September 15, 2010 (75 FR 55978). The Texas PSD SIP meets these requirements by incorporating by reference 40 CFR 52.21(k) and (m) and including the following rule at 116.160(d) that EPA found meets 40 CFR 51.166(l): “All estimates of ambient concentrations required under this subsection shall be based on the applicable air quality models and modeling procedures specified in the EPA Guideline on Air Quality Models, as amended, or models and modeling procedures currently approved by the EPA for use in the state program, and other specific provisions made in the prevention of significant deterioration state implementation plan. If the air quality impact model approved by the EPA or specified in the guideline is inappropriate, the model may be modified or another model substituted on a case-by-case basis, or a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval of the administrator of the EPA.” The Texas rule does not name 40 CFR part 51, Appendix W, as 40 CFR 51.166(l) does, but Appendix W codifies the *Guideline on Air Quality Models*, which is named in the Texas rule, and Section 1.0.a of Appendix W states, in part: “The *Guideline* recommends air quality modeling techniques that should be applied to [SIP] revisions for existing sources and to [NSR], including [PSD]. Applicable only to criteria air pollutants, it is intended for use by EPA Regional Offices in judging the adequacy of modeling analyses performed by EPA, state and local agencies and by industry. [* * *] The *Guideline* is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when supported by sound scientific judgment.”

Appendix W Section 5.2.1 includes the *Guideline* recommendations for models to be utilized in assessing ambient air quality impacts for ozone. Specifically, Section 5.2.1.c: “Estimating the Impact of Individual Sources. Choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users⁴⁶ should consult with the

⁴⁶ EPA notes “model users”, as referenced in Appendix W Section 5.2.1.c, include state and local permitting authorities, and permitting applicants and their representatives.

Regional Office to determine the most suitable approach on a case-by-case basis (subsection 3.2.2).” Due to the complexity of modeling ozone and the dependency on the regional characteristics of atmospheric conditions, EPA believes this is an appropriate approach rather than specifying one particular preferred model nationwide, which may not be appropriate in all circumstances. Instead, the choice of method “depends on the nature of the source and its emissions.” (Appendix W Section 5.2.1.c.) Therefore, EPA continues to believe it is appropriate for permitting authorities to consult and work with EPA Regional Offices as described in Appendix W, including sections 3.0.b and c, 3.2.2 and 3.3, to determine the appropriate approach to assess ozone impacts for each PSD required evaluation. Although EPA has not selected one particular preferred model in Appendix A of Appendix W (Summaries of Preferred Air Quality Models) for conducting ozone impact analyses for individual sources, state and local permitting authorities must comply with the appropriate PSD FIP or SIP requirements with respect to ozone.⁴⁷ We note in other recent EPA actions, some have raised concerns that the lack of a preferred model for ozone has resulted in the belief that no modeling is required or use of inappropriate models is allowed.⁴⁸ This underscores the need for consultation with the EPA Regional office. EPA agrees that states should not be using inappropriate analytical tools in this context. The use of “Scheffe Tables” and other particular screening techniques, which involve ratios of NO_x to VOC that do not consider the impact of biogenic emissions, or that use other outdated or irrelevant modeling, is inappropriate to evaluate a single source’s ozone impacts on an air quality control region. More scientifically appropriate screening and refined tools are available and should be considered for use. Therefore, EPA continues to believe states should consult and work with EPA Regional Offices as described in Appendix W on a case-by-case basis

⁴⁷ EPA has received a national administrative petition entitled, “Sierra Club’s Petition for Rulemaking to Designate Air Quality Models to use for PSD Permit Applications with Regard to Ozone and PM_{2.5} (July 28, 2010).” The petition is in the docket for this rulemaking.

⁴⁸ See the November 26, 2010 final action at 75 FR 72695, pages 72697–72699, “Approval and Promulgation of Implementation Plans; Oklahoma; State Implementation Plan Revisions for Interstate Transport of Pollution, Prevention of Significant Deterioration, Nonattainment New Source Review, Source Registration and Emissions Reporting and Rules of Practice and Procedure.”

⁴⁵ See the TSD for more detail or the action at 75 FR 56424 for a full explanation.

to determine the appropriate method for estimating the impacts of these ozone precursors from individual sources.

For ozone, a proposed emission source's impacts are dependent upon local meteorology and pollution levels in the surrounding atmosphere. Ozone is formed from chemical reactions in the atmosphere. The impact of a new or modified source can have on ozone levels is dependent, in part, upon the existing atmospheric pollutant loading already in the region with which emissions from the new or modified source can react. In addition, meteorological parameters such as wind speed, temperature, wind direction, solar radiation influx, and atmospheric stability are also important factors. The more sophisticated analyses consider meteorology and interactions with emissions from surrounding sources. EPA has not identified an established modeling system that would fit all situations and take into account all of the additional local information about sources and meteorological conditions.

The Texas SIP satisfies the Federal PSD SIP modeling requirements for sources that are major for ozone because the state rules approved by EPA into the SIP include the Federal requirements. EPA has previously commented to TCEQ on PSD permits regarding concerns with technical inadequacies in ozone impact analyses and/or a lack of consultation with the Regional Office on the development of an adequate ozone modeling protocol for single source ozone impacts.⁴⁹ EPA may address implementation of the SIP through separate action and is not precluded by approval of the infrastructure SIP. EPA reaffirms that the assessment of ozone impacts should be done in consultation with the EPA Regional Office.

PM_{2.5} permitting: To implement section 110(a)(2)(C) for the 1997 PM_{2.5} standard, states must provide revisions to implement the PM_{2.5} standard due May 16, 2011 under 73 FR 28321.⁵⁰ On April 20, 2011, the TCEQ adopted revisions to the Texas SIP to amend their PSD and nonattainment NSR programs to implement the PM_{2.5} NAAQS. These revisions became effective and enforceable by the state on May 12, 2011. The state submitted these changes to EPA as a SIP revision on May 19, 2011. EPA will act on this submission in a separate rulemaking.

Minor Source Permitting: Section 110(a)(2)(C) creates "a general duty on

States to include a program in their SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved" (70 FR 71612, 71677). EPA provides states with a "broad degree of discretion" in implementing their minor NSR programs (71 FR 48696, 48700, August 21, 2006). The "considerably less detailed" regulations for minor NSR are provided in 40 CFR 51.160 through 51.164. EPA has determined that the Texas minor NSR program adopted pursuant to section 110(a)(2)(C) of the Act regulates emissions of ozone and its precursors and PM. The Texas minor source permitting requirements are contained at 30 TAC 116 (Subchapter B, Division 1). In its initial SIP approved by EPA on May 31, 1972 (37 FR 10842, 10895), Texas provided for review of new sources and modification of existing sources and for preventing construction or modification if it would result in violations of applicable portions of a control strategy or interfere with attainment or maintenance of the NAAQS, without distinguishing between minor and major sources. Upon EPA's conditional approval of the Texas nonattainment NSR (NNSR) requirements for major sources and major modifications in nonattainment areas, March 25, 1980 (45 FR 19231), the Texas SIP continued to address minor sources and minor modifications. There have been numerous revisions approved for the Texas Minor NSR SIP since 1980. Among many others, they include August 13, 1982 (47 FR 35193); September 18, 2002 (67 FR 58697); November 14, 2003 (68 FR 64543); August 28, 2007 (72 FR 49198); March 8, 2010 (75 FR 10416); and April 2, 2010 (75 FR 16671).

In this action, EPA is proposing to approve the Texas infrastructure SIP for the 1997 ozone and 1997 and 2006 PM_{2.5} NAAQS with respect to the general requirement of section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the state's existing minor NSR program in this action; we are not evaluating this program for consistency with EPA's regulations governing minor NSR herein. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section

110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

In this action, EPA is not proposing to approve or disapprove any state rules with regard to NSR Reform requirements. As noted earlier, on March 11, 2011, the TCEQ submitted revisions to their NSR program to meet the requirements of the NSR Reform. We are acting on a limited portion of that submittal, as described earlier in this discussion of 110(a)(2)(C) and interstate transport⁵¹ and in Section I.C.3 of this action. EPA will act on the remainder of the March 11, 2011 SIP submittals through separate rulemakings.

As noted in Section I.C.4 of this proposal, Texas currently does not have adequate legal authority to implement the PSD permitting program with respect to GHG emissions at or above the emissions thresholds established in the Tailoring Rule, or at other appropriate levels, and thus the Texas SIP does not satisfy this portion of section 110(a)(2)(C). We are proposing to disapprove the Texas SIP for failing to meet the infrastructure requirements for the 1997 ozone and the 1997 and 2006 PM_{2.5} NAAQS with respect to the GHG requirement of section 110(a)(2)(C). EPA is proposing to find that the Texas SIP meets the PSD requirement of section 110(a)(2)(C) with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS, with the exception of section 110(a)(2)(C) as it relates to the GHG component of the PSD program. EPA is proposing to find that the Texas SIP does not meet the PSD requirement of section 110(a)(2)(C) as it relates to the GHG component of the PSD program with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS. However, EPA's disapproval here does not engender an additional statutory obligation, because EPA has already promulgated a FIP for the Texas PSD program to address permitting GHGs at or above the Tailoring Rule thresholds (76 FR 25178).

Interstate transport, pursuant to section 110(a)(2)(D): Section 110(a)(2)(D) has two components, 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) requires SIPs to

⁴⁹ See letter from Carl E. Edlund to Richard Hyde, dated February 10, 2010 and letter from Lawrence E. Starfield to Mark Vickery, dated January 24, 2011, in the docket for this rulemaking.

⁵⁰ The Federal Register action at 73 FR 28321 was published May 16, 2008.

⁵¹ See also the discussion on interstate transport under section 110(a)(2)(D)(i) in this rulemaking.

include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, interfering with maintenance of the NAAQS in another state, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state. Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

PSD and interstate transport, pursuant to section 110(a)(2)(D)(i):

As previously described, one of the four elements or prongs in section 110(a)(2)(D)(i) requires a SIP to contain adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent significant deterioration of its air quality. This is the only element of 110(a)(2)(D)(i) on which EPA is proposing approval in this action. EPA's 2006 Guidance made recommendations for SIP submissions to meet this requirement with respect to both the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5} NAAQS.

The 2006 Guidance states that the PSD permitting program is the primary measure that each state must include to prevent significant deterioration of air quality in accordance with section 110(a)(2)(D)(i)(II). EPA believes that Texas's May 1, 2008 submission is consistent with the 2006 Guidance, when considered in conjunction with the State's PSD program and other PSD program revisions that EPA is proposing to approve in this action. The submittal states that all major sources in Texas are subject to PSD and nonattainment NSR permitting programs. As discussed previously in this rulemaking with regards to section 110(a)(2)(C) and in the TSD, the State's PSD program is in the SIP (57 FR 28093, 62 FR 44083, 67 FR 58697, 69 FR 43752, 74 FR 11851 and 75 FR 55978). Please see the TSD and our discussion of section 110(a)(2)(C) in this rulemaking for additional information.

Consistent with EPA's November 29, 2005, Phase 2 rule for the 1997 8-hour ozone NAAQS (70 FR 71612), the State submitted SIP revisions to modify its PSD provisions to address NO_x as an ozone precursor. These revisions have been discussed previously. EPA believes that the PSD revision for the 1997 8-hour ozone NAAQS that makes NO_x a precursor for ozone for PSD purposes, taken together with the PSD SIP and the interstate transport SIP, satisfies the requirements of the third element of section

110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS, i.e., there will be no interference with any other state's required PSD measures.

As discussed previously in our analysis of section 110(a)(2)(C) for this rulemaking, EPA's PSD regulations also require an ambient impact analysis for ozone for proposed major stationary sources and major modifications to obtain a PSD permit (40 CFR 51.166(k), (l) and (m) and 40 CFR 52.21(k), (l) and (m)). Our affirmation that the Texas SIP addresses the Federal PSD modeling requirements is discussed in more detail under section 110(a)(2)(C) for this rulemaking.

For the 1997 PM_{2.5} NAAQS, Texas stated in its section 110(a)(2)(D)(i) submission that its NSR program is being implemented in accordance with EPA's interim guidance regarding the use of PM₁₀ as a surrogate for PM_{2.5}. Furthermore, as indicated earlier, on April 20, 2011 the TCEQ adopted revisions to the Texas SIP to amend their PSD and nonattainment NSR programs to implement the 1997 PM_{2.5} NAAQS. These revisions became effective and enforceable by the state on May 12, 2011 and the state submitted these revisions to EPA on May 19, 2011 for approval as a SIP revision. They effectively supersede the interim guidance allowing the use of PM₁₀ as a surrogate for PM_{2.5}. Instead, as announced in EPA's May 16, 2008 rulemaking, the 1997 PM₁₀ Surrogate Policy may not be used for any state PSD permits after the 3 years allowed for SIP development (ending May 16, 2011).⁵² With the end of the 1997 PM₁₀ Surrogate Policy in SIP-approved states on May 16, 2011, and the repeal of the grandfather provision in this final action, the 1997 PM₁₀ Surrogate Policy may only be relied on as specified in the May 16, 2011 rulemaking (see 76 FR 28646) for any pending or future applications.

EPA is proposing to find that the Texas SIP meets the PSD requirement of section 110(a)(2)(D)(i) with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS, with the exception of section 110(a)(2)(D)(i) as it relates to the GHG component of the PSD program. EPA is proposing to find that the Texas SIP does not meet the PSD requirement of section 110(a)(2)(D)(i) as it relates to the GHG component of the PSD program with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS. We will act on the remaining three prongs regarding interstate transport, per section 110(a)(2)(D)(i) of the Act in a separate rulemaking.

EPA is not proposing to approve the PSD program in full because Texas does not have adequate legal authority to implement the PSD permitting program with respect to GHG emissions pursuant to section 110(a)(2)(D)(i). EPA's disapproval here does not engender an additional statutory obligation, because EPA has already promulgated a FIP for the Texas PSD program related to permitting GHGs at or above the Tailoring Rule thresholds (76 FR 25178).

As aforementioned, EPA is not proposing action on the remaining three prongs of section 110(a)(2)(D) here (see footnote 19). We note however, that EPA approved into the Texas SIP the Clean Air Interstate Rule (CAIR) NO_x Annual Trading Program on July 30, 2007 (72 FR 41453). The intended effect of this SIP action implementing the CAIR is to reduce NO_x emissions from within Texas that contribute to nonattainment of the 1997 PM_{2.5} NAAQS in downwind states. In addition, Texas submitted revisions to its CAIR SIP on March 4, 2010 to address Phase II of the CAIR (which addresses 2015 and thereafter). The CAIR was overturned by the court. Therefore, the first two prongs of Section 110(a)(2)(D)(i)(I)—which limit emissions that contribute significantly to nonattainment and interfere with maintenance of the NAAQS in other states—will be evaluated in light of the EPA's Cross-State Air Pollution Rule, which found that Texas (and 26 other states in the eastern half of the United States) must significantly improve air quality by reducing power plant emissions that cross state lines and contribute to ground-level ozone and fine particle pollution in other states.⁵³ The protection of visibility requirement of 110(a)(2)(D)(i)(II) will be evaluated when EPA completes its review of the Texas interstate transport SIP submitted on May 1, 2008 and the Texas regional haze SIP revision submitted on March 19, 2009.

Interstate and international pollution abatement, pursuant to section 110(a)(2)(D)(ii):

Section 110(a)(2)(D)(ii) of the Act requires compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Section 115 addresses endangerment of public health or welfare in foreign countries from pollution emitted in the United States. Pursuant to section 115(a), the Administrator has not been made aware of submissions indicating reports, surveys, or studies from any duly constituted international agency regarding air pollution emitted in Texas which may reasonably be anticipated to

⁵² See 73 FR 28321.

⁵³ See 76 FR 48208.

endanger public welfare or health in Mexico. Furthermore under section 115(a), the Administrator has not been requested by the Secretary of State to issue formal notification to Texas that emissions originating in the State are endangering public health or welfare in Mexico.

Section 126(a) of the Act requires new or modified sources to notify neighboring states of potential impacts from such sources. The Texas SIP requires that each major proposed new or modified source provide such notification (see 67 FR 58697). The State also has no pending obligations under section 126 of the Act. For additional detail, please refer to the TSD. However, as previously discussed in this rulemaking, Texas does not have adequate legal authority to implement the PSD program with respect to GHG emissions. Therefore, EPA is not proposing to approve Texas's interstate pollution abatement provisions in full because Texas cannot require each major proposed or modified new source to notify neighboring states of potential impacts from GHGs emitted by such sources.

EPA is proposing to find that the Texas SIP meets the interstate and international pollution abatement requirements of section 110(a)(2)(D)(ii) with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS, with the exception of section 110(a)(2)(D)(ii) as it relates to the GHG notification component of the interstate pollution abatement requirement.

EPA is proposing to find that the Texas SIP does not meet the interstate and international pollution abatement requirements of section 110(a)(2)(D)(ii) with respect to the 1997 ozone and 1997 and 2006 PM_{2.5} NAAQS, as it relates to the GHG notification component of the interstate pollution abatement requirement. EPA's disapproval here does not engender an additional statutory obligation, because EPA has already promulgated a FIP for the Texas PSD program related to permitting GHGs at or above the Tailoring Rule thresholds (76 FR 25178).

Adequate resources and authority, pursuant to section 110(a)(2)(E): Texas statutes contain basic structural provisions that provide TCEQ with generic authority for enforcement of the SIP. The TWC at Section 5.012 declares that "[t]he commission is the agency of the state given primary responsibility for implementing the constitution and laws of this state relating to the conservation of natural resources and the protection of the environment." In addition, the TCEQ has general jurisdiction over the responsibilities

assigned under the TCAA (see THSC at section 382). The general powers and duties of the TCEQ, pursuant to the TCAA (382.011) include administering the TCAA, controlling the quality of the state's air, and accomplishing the purposes of the TCAA "through the control of air contaminants by all practical and economically feasible methods." In Section 382.011, the THSC also states that the TCEQ "has the powers necessary or convenient to carry out its responsibilities." Enforcement authority is provided under the TWC, Chapter 7 (section 7.002).

We propose to find that the generic authority concerning enforcement evinced by these state statutory provisions cumulatively are sufficient to assure enforcement of the NAAQS in Texas, in accordance with the requirements of section 110(a)(2)(E). While EPA proposes to find that these provisions confirm that the TCEQ has adequate authority pursuant to 110(a)(2)(E), EPA is aware of Texas legislation that may have altered the ambit of the state's enforcement authority with respect to the federally approved Texas Title V program. Senate Bill 12, codified at TWC Section 7.00251, by its own statutory terms alters TCEQ's enforcement authority for "violations based on information [TCEQ] receives as required by Title V of the Clean Air Act" upon first infraction. Senate Bill 12 alters TCEQ's enforcement authority with respect to self-certified violations documented in a Title V deviation report. EPA believes it is important to note that Senate Bill 12 does not affect, restrict, or alter the authority ascribed to EPA, citizens, or parties other than TCEQ to enforce the provisions of the SIP with respect to violations of the requirements of the SIP, nor does it preclude TCEQ from seeking injunctive relief for the violations or penalties for a repeat infraction. In conjunction with Texas's generic statutory enforcement authority provisions cited previously, EPA concludes that this legislation does not impede EPA's approval of Texas's infrastructure SIP for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS under the requirements of CAA 110(a)(2).

However, EPA's proposed approval of the Texas infrastructure SIP submission as meeting the requirements of 110(a)(2)(E) does not include evaluation of adequate enforcement authority under the Title V program, as Title V is subject to statutory and regulatory mechanisms outside those provided within the scope of section 110(a). EPA is currently, under Title V statutory and other regulatory mechanisms, evaluating

Senate Bill 12 for potential impacts on Texas's enforcement authority to collect penalties with respect to the types of violations covered by this legislation. EPA believes Senate Bill 12 may affect TCEQ's enforcement authority under its federally approved Title V program to collect penalties with respect to a subset of self-reported violations upon the first infraction. Section 502 of Title V under the CAA requires that a permitting authority have adequate authority in part, to recover civil penalties in a maximum amount of not less than \$10,000 per day for each violation. This Federal statutory requirement is codified in regulations governing the Title V program. 40 CFR 70.11 requires that an agency administering a Title V program shall have enforcement authority, in part, to recover civil penalties for the violation of any applicable requirement. 40 CFR 70.4(i) establishes procedures to address a state's Title V revisions, and authorizes EPA to request, and the state must provide, a supplemental Attorney General's statement, program description, or other such documents or other information as the EPA determines are necessary when the agency has reason to believe the circumstances with respect to a state's approved Title V program have changed. In conformity with the statutory and regulatory process for review of a state's Title V program, EPA has initiated this process by a formal letter to TCEQ requesting a supplemental Attorney General's statement and information EPA believes necessary to evaluate the impact of Senate Bill 12 on Texas's Title V program. A copy of this letter is included in the docket for this rulemaking.⁵⁴

Because EPA considers evaluation of a state's Title V program outside the statutory and regulatory parameters of section 110(a), our evaluation of Texas's enforcement authority and consequent approval under 110(a)(2)(E) for infrastructure SIP purposes also does not preclude EPA's future actions with respect to Texas's enforcement authority pursuant to the Title V program. The scope of this action is limited to determining whether the existing Texas SIP meets certain infrastructure and interstate transport requirements of CAA 110(a)(2) with respect to the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS.

With regard to whether the State has adequate resources to carry out its

⁵⁴ See letter from Lawrence E. Starfield to Mark R. Vickery, dated May 19, 2011, in the docket for this rulemaking.

duties as required by 110(E), the commission may apply for, solicit, contract for, receive, or accept money from any source to carry out its duties under this chapter (TCAA, section 382.0335). This section also requires the TCEQ to establish fees not less than 50 percent of the TCEQ's actual annual expenditures to review and act on permits or special permits; amend and review permits, inspect permitted, exempted, and specially permitted facilities; and enforce the rules and orders of certain adopted permits, special permits, and exemptions issued. Furthermore under section 382.0622 of the TCAA, the TCEQ may request appropriations of sufficient money to contract for services of local units of government meeting certain eligibility criteria to ensure that the combination of Federal and state funds annually available for an air pollution program is equal to or greater than the program costs for the operation of an air quality program by the local unit of government. The Texas SIP provides for the collection of fees at 30 TAC 106.50 (Registration Fees) and 30 TAC 116 (Determination of Fees, Payment of Fees, PSD Permit Fees, Renewal Application Fees, Standard Permit Fees, and Permit Fees). Most of these provisions have been in the Texas SIP for many decades and revisions to them were approved on March 20, 2009 (74 FR 11851) and the Permit Fees at 30 TAC 116.926 were approved on January 11, 2011 (76 FR 1525). The state also has the authority to collect fees for vehicle inspection and maintenance (I/M) programs in several nonattainment areas and in the Austin area under THSC sections 382.202 and 382.302. These rules are approved in the Texas SIP and are found at 30 TAC 114.53 (71 FR 52670) and 114.87 (70 FR 45542). See the TSD for more detail.

There are Federal sources of funding for the implementation of the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS through, for example, the CAA sections 103 and 105 grant funds. The TCEQ receives Federal funds on an annual basis, under section 105 of the Act, to support its air quality programs. Fees collected for motor vehicle inspections, the Title V and non-Title V permit programs, and other inspections, emissions and renewal fees required of other air pollution sources also provide necessary funds to help implement the State's air programs. More specific information on permitting fees is provided in the discussion for 110(a)(2)(L) below and in the TSD.

Texas has routinely submitted SIP revisions with assurances that TCEQ has adequate personnel, funding, and

authority under state law to implement the SIP. The State has provided these assurances in SIP submittals approved by EPA.⁵⁵

Section 110(a)(2)(E)(ii) requires that the state comply with section 128. Section 128 requires: (1) That the majority of members of the state body which approves permits or enforcement orders do not derive any significant portion of their income from entities subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such body be adequately disclosed. In 1981, the EPA approved into the SIP the Standards of Conduct of State Officers and Employees (Texas Revised Civil Statute Annotated, Article 6252-9b) (46 FR 61124). The TWC addresses these requirements in the Standards of conduct of state officers and employees. See TWC Title 2, Subtitle A, Chapter 5, Subchapter C, § 5.053: Eligibility for Membership; § 5.054: Removal of Commission Members; § 5.059: Conflict of Interest; § 5.060: Lobbyist Prohibition; and Subchapter D (General Powers and Duties of the Commission), § 5.111: Standards of Conduct.

EPA is proposing to find that the Texas SIP meets the requirements of section 110(a)(2)(E) with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS.

Stationary source monitoring system, pursuant to section 110(a)(2)(F): 30 TAC chapters 101, 106, 111, 112, and 115-117 require that stationary sources monitor for compliance, provide recordkeeping and reporting, and provide for enforcement for ozone, PM_{2.5}, and precursors to these pollutants (NO_x, SO₂ and VOCs). These source monitoring requirements also generate data for these pollutants.

Under the Texas SIP rules, the TCEQ is required to analyze the emissions data from point, area, mobile, and biogenic (natural) sources. The TCEQ uses this data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with Texas and EPA requirements. Emissions data are available electronically: http://www.tceq.texas.gov/nav/main/air_main.html#report. Texas's point source emission inventory (EI) is available at <http://www.tceq.texas.gov/airquality/point-source/psei/psei.html>.

⁵⁵ The DFW Reasonable Further Progress SIP to address the 1997 ozone moderate nonattainment area was approved on October 7, 2008 (73 FR 58475). See also the approved SIPs for the three Early Action Compact (EAC) areas on August 19, 2005, (70 FR 48640 and 70 FR 48642) and August 22, 2005 (70 FR 48877).

These rules are in the federally approved SIP. A list of the chapters and **Federal Register** citations is provided in the TSD.

EPA is proposing to find that the Texas SIP meets the requirements of section 110(a)(2)(F) with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS.

Emergency power, pursuant to section 110(a)(2)(G): Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. The TCAA and TWC provide the TCEQ with authority to address such activities⁵⁶ and the TCEQ has contingency plans to implement emergency episode provisions in the SIP. The Texas Air Pollution Emergency Episode Contingency Plan was initially approved into the SIP on October 7, 1982 (47 FR 44260). Subsequent revisions were approved on September 6, 1990 (55 FR 36632) and July 26, 2000 (65 FR 45915). The episode criteria and contingency measures are found in 30 TAC 118. The rules at 30 TAC 118 (Renamed "Control of Air Pollution Episodes") provide for air pollution emergency episodes and preplanned abatement strategies. The criteria for ozone are based on a 1-hour average ozone level. These episode criteria and contingency measures are adequate to address ozone emergency episodes and are in the federally approved SIP.

The 2009 Infrastructure SIP Guidance for PM_{2.5} recommends that a state with at least one monitored 24-hour PM_{2.5} value exceeding 140.4 µg/m³ since 2006 establish an emergency episode plan and contingency measures to be implemented should such level be exceeded again. The 2006-2010 ambient air quality monitoring data⁵⁷ for Texas do not exceed 140.4 µg/m³. The PM_{2.5} levels have consistently remained below this level (140.4 µg/m³), and furthermore, the state has appropriate general emergency powers to address PM_{2.5} related episodes to protect the environment and public health. Given the state's monitored PM_{2.5} levels, EPA is proposing that Texas is not required to submit an emergency episode plan and contingency measures at this time, for the 1997 and 2006 PM_{2.5} standards.

⁵⁶ See TCAA at 382.026 and TWC Chapter 5, Subchapter L (5.514).

⁵⁷ The ozone and PM data are available through AQS and the State Web site (http://www.tceq.texas.gov/agency/air_main.html). The AQS data for PM are provided in the docket for this rulemaking.

Additional detail is provided in the TSD.

EPA is proposing to find that the Texas SIP meets the requirements of section 110(a)(2)(G) with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS.

Future SIP revisions, pursuant to section 110(a)(2)(H): The TCAA directs the TCEQ to prepare and develop the SIP and provides TCEQ with the power to amend any rule or regulation it makes (TCAA Section 382.0173). In addition, the TCAA in Section 382.036 provides that “[t]he board shall: [* * *] advise, consult and cooperate with [* * *] the federal government, [* * *] in regard to matters of common interest in air control.” Thus, Texas has the authority to revise its SIP from time to time as may be necessary to take into account revisions of primary or secondary NAAQS, or the availability of improved or more expeditious methods of attaining such standards. Furthermore, Texas also has the authority under these TCAA provisions to revise its SIP in the event the EPA pursuant to the Act finds the SIP to be substantially inadequate to attain the NAAQS.

EPA is proposing to find that the Texas SIP meets the requirements of section 110(a)(2)(H) with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS.

*Consultation with government officials, pursuant to section 110(a)(2)(J):*⁵⁸ The TCAA provides under Section 382.017 that “[t]he commission shall hold a public hearing before adopting a rule consistent with the policy and purposes of this chapter.” In addition, the TCAA provides under Section 382.036 that “[t]he commission shall: [* * *] advise, consult, and cooperate with other state agencies, political subdivisions of the state, industries, other states, the Federal government, and interested persons or groups concerning matters of common interest in air quality control.” The TCAA under Section 382.035 also authorizes the TCEQ to adopt by rule any Memorandum of Understanding (MOU) between the TCEQ and any other state Agency. Accordingly, the TCEQ has provisions to establish a Memorandum of Agreement (MOA) with one or more agencies in order to clarify areas of responsibility. Several of these MOAs are in the federally approved SIP.⁵⁹

⁵⁸ Section 110(a)(2)(J) is divided into three segments: Consultation with government officials; public notification; and PSD and visibility protection.

⁵⁹ For example, see the Memorandum of Understanding (MOU) with the Texas Department

EPA is proposing to find that the Texas SIP meets the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS.

Public notification if NAAQS are exceeded, pursuant to section 110(a)(2)(J): Public notification begins with the air quality forecasts, which advise the public of conditions capable of exceeding the 8-hour ozone⁶⁰ and PM_{2.5} NAAQS. The air quality forecasts can be found on the TCEQ Web site: for 8-hour ozone, the forecast includes 9 regions⁶¹ in the State; for PM_{2.5}, the forecast includes 14 regions⁶² in the State. Ozone forecasts are made daily during the ozone season for each of the nine forecast areas.⁶³ The ozone forecasts are made, in most cases, a day in advance by 2 p.m. local time and are valid for the next day. The only exception is for the Houston area, where the forecast can be updated as late as 9 a.m. local time on the same day that the forecast is in effect. When the forecast indicates that ozone levels will be above the 8-hour ozone standard, the State notifies the National Weather Service, who then broadcasts the information across its weather wire. In addition, four areas receive “ozone warnings” when monitors measure levels above the 8-hour ozone standard.⁶⁴ Ozone warnings for these areas are generated automatically, approximately 20 minutes after the hour when high ozone is measured for that particular area. The

of Transportation, 70 FR 73380 (December 12, 2005).

⁶⁰ The TCEQ forecasts for 8-hour ozone are based on the 2008 ozone standard, which is 75 ppb.

⁶¹ The 9 forecast areas for 8-hour ozone are Austin, Beaumont-Port Arthur, Corpus Christi, Dallas-Fort Worth, El Paso, Houston, San Antonio, Tyler-Longview, and Victoria. See http://www.tceq.texas.gov/cgi-bin/compliance/monops/ozone_actionday.pl.

⁶² The 14 forecast areas for PM_{2.5} are Austin, Beaumont-Port Arthur, Brownsville-McAllen, Corpus Christi, Dallas-Fort Worth, El Paso, Houston, Laredo, Lubbock, Midland-Odessa, San Antonio, Tyler-Longview, Victoria, and Waco-Killeen. See http://www.tceq.texas.gov/airquality/monops/forecast_today.html.

⁶³ Ozone is a gas composed of three oxygen atoms. Ground level ozone is generally not emitted directly from a vehicle’s exhaust or an industrial smokestack, but is created by a chemical reaction between NO_x and VOCs in the presence of sunlight and high ambient temperatures. Thus, ozone is known primarily as a summertime air pollutant. For South Texas, the ozone season runs from January 1 through December 31. For North Texas, the ozone season runs from March 1 through October 31 (see 40 CFR 58, Appendix D, Table D–3). The Texas air quality control regions are defined at 62 FR 30270 (June 3, 1997).

⁶⁴ The ozone warning areas: Austin, Dallas-Fort Worth, Houston-Galveston-Brazoria, and San Antonio.

ozone forecasts and warnings are available through e-mail notification.⁶⁵

EPA is proposing to find that the Texas SIP meets the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS.

PSD and visibility protection, pursuant to section 110(a)(2)(J): This portion of section 110(a)(2)(J) in part requires that a state’s SIP meet the applicable requirements of section 110(a)(2)(C) as relating to PSD programs. As discussed previously in this rulemaking with regards to section 110(a)(2)(C) and in the TSD, the State’s PSD program is in the SIP (57 FR 28093, 62 FR 44083, 67 FR 58697, 69 FR 43752, 74 FR 11851 and 75 FR 55978). In addition to the approved program and to meet the requirements of 110(a)(2)(C) and 110(a)(2)(D)(i) for the 1997 ozone standard, EPA believes the State must have updated its PSD rules to treat NO_x as a precursor to ozone. Thus, we are proposing to approve portions of SIP revisions (submitted March 11, 2011) to implement NO_x as a precursor to ozone. These revisions are proposed for the definitions at 30 TAC 116 and 30 TAC 101, as discussed previously in this rulemaking with regards to section 110(a)(2)(C) and 110(a)(2)(D)(i). To implement section 110(a)(2)(C) for the 1997 PM_{2.5} standard, states must provide revisions due May 16, 2011 under EPA’s Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (73 FR 28321). On April 20, 2011, the TCEQ adopted revisions to the Texas SIP to amend their PSD and nonattainment NSR programs to implement the PM_{2.5} NAAQS. These revisions became effective and enforceable by the state on May 12, 2011. The state submitted these changes to EPA as a SIP revision on May 19, 2011. EPA will act on this submission in a separate rulemaking.

EPA is not proposing to approve the PSD program in full pursuant to section 110(a)(2)(J) because, as stated previously in our discussion of the PSD program under section 110(a)(2)(C), Texas does not have adequate legal authority to implement the PSD permitting program with respect to GHG emissions. The PSD program related to permitting GHGs at or above the Tailoring Rule thresholds for the State is currently under a FIP. More detail is provided in the discussion for section 110(a)(2)(C) in this rulemaking and in the TSD. EPA is proposing to find that the Texas SIP does not meet the portion of section

⁶⁵ See http://www.tceq.texas.gov/airquality/monops/ozone_email.html.

110(a)(2)(J) that relates to permitting GHGs with respect to the 1997 8-hour ozone and PM_{2.5} NAAQS. However, EPA's disapproval here does not engender any additional statutory obligation, because EPA has already promulgated a FIP for the Texas PSD program related to permitting GHGs at or above the Tailoring Rule thresholds (76 FR 25178).

EPA approved the Texas SIP Revision for Visibility Protection and long-term strategy for visibility into the Texas SIP on February 23, 1989 (57 FR 28093). The State's most recent SIP revision of their Regional Haze program was submitted to EPA on March 19, 2009, and we will take action on it in a separate rulemaking. With regard to the applicable requirements for visibility protection, EPA recognizes that States are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary PM_{2.5} NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. EPA is therefore proposing to find that the Texas SIP meets this portion of section 110(a)(2)(J) with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS.

EPA is proposing to find that the Texas SIP meets the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS with the exception of section 110(a)(2)(J) as it relates to the GHG component of the PSD program. EPA is proposing to find that the Texas SIP does not meet the requirements of section 110(a)(2)(J) as it relates to the GHG component of the PSD program with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS.

Air quality modeling and submission of data, pursuant to section 110(a)(2)(K): The TCAA prescribes at Section 382.012 that the TCEQ "shall prepare and develop a general, comprehensive plan for the proper control of the state's air." Texas has extensive modeling in numerous submitted SIP revisions. As examples, Texas submitted modeling in SIP revisions for the Austin and Northeast Texas Early Action Compact (EAC) Areas to demonstrate attainment of the 1997 8-hour ozone standard. The

modeling in these SIP revisions was approved by EPA and adopted into the SIP.⁶⁶

This section of the Act also requires that a SIP provide for the submission of data related to such air quality modeling to the EPA upon request. As indicated above, section 382.036 of the TCAA requires the TCEQ to cooperate with the Federal government, allowing it to make this submission to the EPA.

EPA is proposing to find that the Texas SIP meets the requirements of section 110(a)(2)(K) with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS.

Permitting fees, pursuant to section 110(a)(2)(L): The TCAA under section 382.062 provides authority for the TCEQ to charge and collect fees for Title V and non-Title V permit applications, revisions, renewals and inspections. The non-Title V rules that address permit fees found at 30 TAC 106 and 116 are in the federally approved SIP.⁶⁷ A detailed list of the applicable chapters listed herein is provided in the TSD. EPA is proposing to find that the Texas SIP meets the requirements of section 110(a)(2)(L) with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS.

Consultation/participation by affected local entities, pursuant to section 110(a)(2)(M): As indicated above, the TCAA directs the TCEQ to hold a public hearing before adopting a rule. In addition, the TCAA provides that the TCEQ shall "advise, consult and cooperate with [* * *] political subdivisions of the state, industries, [* * *] and interested persons or groups concerning matters of common interest in air control." The TCEQ has a MOA with each of five local entities: the cities of Dallas and Fort Worth, the Houston and DFW airports, and the North Central Texas Council of Governments.⁶⁸ These agreements are in the federally approved SIP. EPA is proposing to find that the Texas SIP meets the requirements of section 110(a)(2)(M) with respect to the 1997 ozone and PM_{2.5} NAAQS with respect to the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS.

⁶⁶ The Austin and Northeast Texas areas were designated as attainment and participated in the EAC program. EPA approved the modeling for these areas on August 19, 2005 at 70 FR 48640 and 70 FR 48642, respectively.

⁶⁷ See 62 FR 44083, 67 FR 58697, 74 FR 11851 and 76 FR 1525 (January 11, 2011).

⁶⁸ See MOA with the Houston Airport System, 66 FR 57222 (November 14, 2001); MOAs with the cities of Dallas and Fort Worth and the DFW International Airport Board, 67 FR 19516 (April 22, 2002); and MOA with the NCTCOG, 70 FR 20816 (April 22, 2005).

IV. Proposed Action

We are proposing to partially approve and partially disapprove the submittals provided by the State of Texas to demonstrate that the Texas SIP meets the requirements of Section 110(a)(1) and (2) of the Act for the 1997 ozone and 1997 and 2006 PM_{2.5} NAAQS.

We are proposing to find that the current Texas SIP meets the infrastructure elements for the 1997 ozone and 1997 and 2006 PM_{2.5} NAAQS listed below:

- Emission limits and other control measures (110(a)(2)(A) of the Act);
- Ambient air quality monitoring/data system (110(a)(2)(B) of the Act);

- Program for enforcement of control measures (110(a)(2)(C) of the Act), except for the portion that addresses GHGs;

- Interstate transport, pursuant to section (110(a)(2)(D)(ii) of the Act), except for the portion that addresses GHGs;

- Adequate resources (110(a)(2)(E) of the Act);

- Stationary source monitoring system (110(a)(2)(F) of the Act);

- Emergency power (110(a)(2)(G) of the Act);

- Future SIP revisions (110(a)(2)(H) of the Act);

- Consultation with government officials (110(a)(2)(I) of the Act);

- Public notification (110(a)(2)(J) of the Act);

- Prevention of significant deterioration (110(a)(2)(J) of the Act), except for the portion that addresses GHGs;

- Visibility protection (110(a)(2)(J) of the Act);

- Air quality modeling data (110(a)(2)(K) of the Act);

- Permitting fees (110(a)(2)(L) of the Act); and

- Consultation/participation by affected local entities (110(a)(2)(M) of the Act).

We are proposing to find that the current Texas SIP does not meet the infrastructure elements for the 1997 ozone and 1997 and 2006 PM_{2.5} NAAQS listed below:

- Program for enforcement of control measures (110(a)(2)(C) of the Act), only as it relates to GHGs;

- Interstate transport, pursuant to section 110(a)(2)(D)(ii) of the Act, only as it relates to GHGs; and

- Prevention of significant deterioration (110(a)(2)(J) of the Act), only as it relates to GHGs.

We are also proposing to approve the Texas Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II) that emissions from sources in Texas do not interfere with measures required in the

SIP of any other state under part C of the CAA to prevent significant deterioration of air quality, except as they relate to GHGs for the 1997 ozone and 1997 and 2006 PM_{2.5} NAAQS.

We are proposing to disapprove the portion of the Texas Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II), as it relates to GHGs, that emissions from sources in Texas do not interfere with measures required in the SIP of any other state under part C of the CAA to prevent significant deterioration of air quality, for the 1997 ozone and 1997 and 2006 PM_{2.5} NAAQS. We will act on the remaining three SIP elements regarding interstate transport, per section 110(a)(2)(D)(i) of the Act in separate rulemakings.

We are also proposing to approve the following revisions to 30 TAC 101.1 and 30 TAC 116.12, submitted by TCEQ on March 8, 2011, as part of the Texas NSR SIP:

1. The substantive revisions to the definition of Maintenance area at 30 TAC 101.1(54).
2. The substantive revisions to the definition of Nonattainment area at 30 TAC 101.1(70).
3. The substantive revisions to the definition of Reportable quantity at 30 TAC 101.1(88).
4. The non-substantive revisions to the definition of Volatile organic compound at 30 TAC 101.1(115).
5. The non-substantive revision to the title of 30 TAC 116.12 from Nonattainment Review Definitions to Nonattainment and Prevention of Significant Deterioration Review Definitions.
6. The non-substantive revisions to the introductory paragraph at 30 TAC 116.12.
7. The substantive revisions that add *Federally Regulated NSR pollutant* to the definitions at 30 TAC 116.12(14).
8. The non-substantive changes to rename and renumber the definition of Major facility/stationary source at 30 TAC 116.12(10) to *Major stationary source* at 30 TAC 116.12(17) and the substantive changes making the definition consistent with 40 CFR 51.166(b)(1).
9. The non-substantive changes to renumber the definition of Major modification at 30 TAC 116.12(11) as 30 TAC 116.12(18) and provide editorial revisions, and the substantive changes making the definition consistent with 40 CFR 51.165(a)(1) and 40 CFR 51.166(b)(1) and (2), and which address the grounds for the September 15, 2010 disapproval of this definition. EPA is proposing these actions in accordance with section 110 and part C

of the Act and EPA's regulations and consistent with EPA guidance.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed 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 Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This proposed 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 CAA 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 CAA 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 CAA 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 proposed 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 CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the action EPA is proposing neither imposes substantial direct compliance costs on tribal governments, nor preempts tribal law. Therefore, the requirements of section 5(b) and 5(c) of the Executive Order do not apply to this rule. Consistent with EPA policy, EPA nonetheless is offering consultation to Tribes regarding this rulemaking action. EPA will respond to relevant comments in the final rulemaking 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 proposed 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 CAA 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 action 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 proposed action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

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 proposed action. In reviewing SIP submissions, EPA’s role is to approve or disapprove state choices, based on the criteria of the CAA. 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 CAA 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.

K. Statutory Authority

The statutory authority for this action is provided by section 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 14, 2011.

Al Armendariz,

Regional Administrator, Region 6.

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