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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2010-0612; FRL-9761-2]

#### Approval and Promulgation of Implementation Plans; Texas; Public Participation for Air Quality Permit Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP) that establish the public participation requirements for air quality permits. EPA proposes to find that these revisions to the Texas SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations and are consistent with EPA policies. Texas submitted the public participation provisions in four separate revisions to the SIP on July 22, 1998; October 25, 1999; July 2, 2010; and March 11, 2011. EPA is proposing this action under section 110 and parts C and D of the Clean Air Act (the Act).

**DATES:** Comments must be received on or before February 11, 2013.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2010-0612, by one of the following methods:

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

- *Email:* Ms. Adina Wiley at [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).

- *Fax:* Ms. Adina Wiley, Air Permits Section (6PD-R), at fax number 214-665-6762.

- *Mail:* Ms. Adina Wiley, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- *Hand or Courier Delivery:* Ms. Adina Wiley, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8:30

a.m. and 4:30 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R06-OAR-2010-0612. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](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 email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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 [www.regulations.gov](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 at [www.regulations.gov](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 or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 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 75202. The State submittals, which are part of the EPA docket, are also available for public inspection during official business hours by appointment: Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Ms. Adina Wiley, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-2115; fax number 214-665-6762; email address [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us," and "our" means EPA.

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## I. Background for Our Proposed Action

### A. What action is EPA proposing?

The Clean Air Act at section 110(a)(2)(C) requires states to develop and implement permitting programs for attainment and nonattainment areas that cover both construction and modification of stationary sources. EPA codified minimum requirements for these State permitting programs including public participation and notification requirements at 40 CFR 51.160–51.164. The EPA originally adopted these rules prior to the creation of the PSD permit program in 1977, which has additional detailed public participation requirements in 40 CFR 51.166(q).<sup>1</sup>

EPA is proposing to approve submittals from the State of Texas as revisions to the Texas State Implementation Plan (SIP) that establish the public participation requirements

for air quality permits. EPA proposes to find that these submitted revisions to the Texas SIP comply with the CAA and EPA regulations and are consistent with EPA policies. Texas submitted the public participation provisions in four separate submittals for approval to EPA as revisions to the SIP on July 22, 1998, October 25, 1999, July 2, 2010, and March 11, 2011. EPA is proposing this action under section 110 and parts C and D of the Clean Air Act (the Act).

### B. History of EPA Actions on Texas Public Participation for Air Quality Permit Applications

The Texas SIP currently addresses public notice provisions for air quality permits through regulations adopted by the State on June 17, 1998, effective July 8, 1998, at 30 TAC section 116.130—Applicability; section 116.131—Public Notification Requirements; section 116.132—Public Notice Format; section 116.133—Sign Posting Requirements; section 116.134—Notification of Affected Agencies; section 116.136—Public Comment Procedures; and section 116.137—Notification of Final Agency Action. EPA SIP-approved the submitted Sections 116.130, 116.131, 116.132 (except subsections (c) and (d)), 116.133 (except subsections (f) and (g)), 116.134, 116.136, and 116.137 on September 18, 2002 (67 FR 58697), effective October 18, 2002. EPA SIP-approved the submitted Sections 116.132(c) and (d) and 116.133(f) and (g) on March 10, 2006 (71 FR 12285), effective May 9, 2006.

On November 26, 2008, EPA published a proposed limited approval/limited disapproval (LA/LD) of three submittals from the State requesting approval of them as revisions to the Texas SIP pertaining to public notice for air quality permits (see 73 FR 72001). Our proposed LA/LD encompassed revisions submitted by the TCEQ on December 15, 1995; July 22, 1998; and October 25, 1999. Please see the Technical Support Document (TSD) accompanying this action for a complete list of the sections that were the subject of our proposed LA/LD.

On June 2, 2010, the TCEQ adopted amendments to 30 TAC Chapter 39, Public Notice; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; and Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and corresponding revisions to the Texas SIP. These revised rules were submitted for EPA approval as a SIP revision on July 2, 2010, to address our identified concerns in the proposed LA/LD.

At that time, TCEQ also adopted and submitted to EPA the withdrawal from consideration by EPA of revisions to the Texas SIP that were previously submitted to EPA on October 25, 1999; July 31, 2002; and March 9, 2006. Please see the July 2, 2010 SIP submittal cover letter and the TSD for a complete listing of the sections withdrawn. The cover letter and TSD can be found in the rulemaking docket for this action. To summarize the cover letter, on July 2, 2010, the TCEQ withdrew from EPA’s consideration as revisions to the SIP all of the public participation rules previously submitted, except for three subsections: 30 TAC sections 39.411(a) and 55.152(b) as adopted in 1999, and currently amended 30 TAC section 39.418(b)(3), submitted to EPA in 1999 as section 39.418(b)(4).

Upon receipt of the new public notice SIP revision submittal, EPA published a withdrawal of our proposed LA/LD on November 5, 2010 (see 75 FR 68291). In that notice we state that we withdrew our proposed LA/LD of 30 TAC sections 39.201, 39.401, 39.403, 39.405, 39.409, 39.411, 39.413, 39.418, 39.419, 39.420, 39.423, 39.601–39.605, 55.1, 55.21, 55.101, 55.103, 55.150, 55.152, 55.154, 55.156, 55.200, 55.201, 55.203, 55.205, 55.209, and 55.211 because these sections are no longer before us for consideration. Additionally, even though the TCEQ left before us for review sections 30 TAC 39.411(a), 39.418(b)(4) and 55.152(b) as adopted October 25, 1999, we withdrew our proposed LA/LD of these subsections. We did not take any further action on these three subsections in the November 5, 2010, notice because we concluded that it was the TCEQ’s intent that these three subsections be evaluated with the entirety of the new public participation submittal from July 2, 2010. Our rationale for this approach is fully explained in our November 5, 2010 notice, which can be found in the docket for this rulemaking. In our November 5, 2010 FRN we also withdrew our proposed LA/LD of the submitted sections 116.111, 116.114, 116.116, 116.183, 116.312 and 116.740. We withdrew our action on these submitted sections because they included cross-references to the Chapter 39 public participation rules and we again concluded that it was the TCEQ’s intent for these sections to be evaluated with the entirety of the public participation submittal from July 2, 2010. Our November 5, 2010 FRN did not address the submitted repeal of section 116.124; nor has TCEQ withdrawn this repeal from our consideration. Therefore, the October

<sup>1</sup> EPA expanded the NSR regulations in 1973 to require public participation because EPA determined that public participation was necessary to maintain air quality as required by the CAA. See 60 FR 45530, at 45548 (citing 38 FR 15834, 15836 (1973) and *NRDC v. EPA*, No. 72–1522 (D.C. Cir.)). See also See 61 FR 38250, at 38276 and 38320.

25, 1999 submitted repeal of section 116.124 remains before EPA for review.

## II. Summary of the State Submittals That EPA Is Reviewing

EPA's proposed approval action today addresses portions of four revisions to the Texas SIP submitted on July 22, 1998, October 25, 1999, July 2, 2010, and March 11, 2011.

### A. July 22, 1998

On June 17, 1998, the Texas Natural Resource Conservation Commission<sup>2</sup> made general corrections and clarifications to 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification. Governor George W. Bush submitted these amendments to EPA for approval as revisions to the Texas SIP in a letter dated July 22, 1998. EPA has taken several rulemaking actions over the years on this submitted SIP revision package. However, we have not previously addressed the submittal of the public participation provisions for permit renewal applications at 30 TAC 116.312. Note that the July 22, 1998 submittal of section 116.312 included a repeal and replacement of section 116.312 as submitted December 15, 1995. Therefore, section 116.312 as submitted July 22, 1998 remains before us for review and supersedes the December 15, 1995 submittal.

### B. October 25, 1999

On September 2 and September 29, 1999, the TCEQ adopted regulations to implement Texas House Bill 801 to establish new procedures for public participation in environmental permitting. Governor George W. Bush submitted these amendments to EPA for approval as revisions to the Texas SIP

in a letter dated October 25, 1999. The State also submitted the repeal of section 116.124 at that time. On July 2, 2010, the TCEQ formally withdrew from our consideration all submitted components of the October 25, 1999, submittal, with the exception of sections 39.411(a), 39.418(b)(4), 55.152(b), 116.111(b), 116.114(a)(2), 116.114(a)(2)(A), 116.114(a)(2)(B), 116.114(b)(1), 116.114(c)(1)–(3), 116.116(b)(4) and 116.312. These sections were retained for EPA review and will be analyzed with the entirety of the Public Participation revisions submitted on July 2, 2010.

### C. July 2, 2010

On June 2, 2010, the TCEQ adopted new and revised regulations concerning Public Notice at 30 TAC Chapter 39; Requests for Reconsideration and Contested Case Hearings; Public Notice at 30 TAC Chapter 55; and Control of Air Pollution by Permits for New Construction or Modification at 30 TAC Chapter 116. Chairman Bryan W. Shaw, Ph.D., submitted these amendments to EPA for approval as revisions to the Texas SIP in a letter dated July 2, 2010. The amendments submitted for approval as revisions to the Texas SIP are as follows: 30 TAC Sections 39.402(a)(1)–(6), (8), and (10)–(12); 39.405(f)(3) and (g), (h)(1)(A)–(4), (6), (8)–(11), (i) and (j); 39.407; 39.409; 39.411(e)(1)–(4)(A)(i) and (iii), (4)(B), (5)(A) and (B), (6)–(10), (11)(A)(i) and (iii) and (iv), (11)(B)–(F), (13) and (15), and (f)(1)–(8), (g) and (h); 39.418(a), (b)(2)(A) and (c); 39.419(e); 39.420(c)(1)(A)–(D)(i)(I) and (II), (D)(ii), (c)(2), (d)–(e), and (h); 39.601; 39.602; 39.603; 39.604; 39.605; 55.150; 55.152(a)(1), (2), (5) and (6); 55.154(a), (b), (c)(1)–(3) and (5), and (d)–(g);

55.156(a), (b), (c)(1), (e) and (g); 116.114(a)(2)(B), (a)(2)(C), (c)(2), and (c)(3); and 116.194. As a result of the submitted amendments to 30 TAC Sections 39.411(f)(8)(A) and 39.605(1)(D), the TCEQ requested on July 2, 2010, that EPA remove from the Texas SIP the corresponding two commitments from paragraph 7 of the July 17, 1987 Texas PSD Supplement.

On July 2, 2010, the TCEQ also submitted a request to withdraw from consideration by the EPA, the new and amended rules that were previously submitted to EPA for approval as revisions to the SIP on October 25, 1999; July 31, 2002; and March 9, 2006. The TCEQ's letter withdrew from our consideration all sections of the 1999, 2002, and 2006 submittals except for 30 TAC sections 39.411(a) and 55.152(b) as adopted in 1999, and section 39.418(b)(3), submitted in 1999 as section 39.418(b)(4).

### D. March 11, 2011

The TCEQ originally adopted 30 TAC Section 116.194 on January 11, 2006, to establish the public notice provisions for PAL permit applications. The TCEQ submitted these revisions to EPA on February 1, 2006 as a SIP submittal. EPA disapproved these provisions for PAL public notice on September 15, 2010. See 75 FR 56424. On March 11, 2011, the TCEQ resubmitted section 116.194 as adopted January 11, 2006, in addition to the July 2, 2010 amendments to section 116.194. Therefore, section 116.194 as adopted on January 11, 2006, and amended on July 2, 2010, remains before us for review.

The following table identifies the specific sections that were submitted for EPA review and approval into the Texas SIP.

TABLE 1—RULES SUBMITTED IN EACH SIP REVISION SUBMITTAL THAT ARE AFFECTED BY THIS PROPOSED ACTION

Section title	Texas rule project number	State submittal date	State adoption date	Rules addressed in this action
30 TAC 39.402—Applicability to Air Quality Permits and Permit Amendments.	2010–004–039–LS .....	July 2, 2010 .....	June 2, 2010 .....	39.402(a)(1)–(3), (a)(6) proposed for approval.
30 TAC 39.405—General Notice Provisions.	2010–004–039–LS .....	July 2, 2010 .....	June 2, 2010 .....	39.405(f)(3) and (g), (h)(1)(A), (h)(2)–(h)(4), (h)(6), (h)(8)–(h)(11), (i) and (j) proposed for approval.
30 TAC 39.407—Mailing Lists	2010–004–039–LS .....	July 2, 2010 .....	September 2, 1999 .....	39.407 resubmitted on July 2, 2010.
30 TAC 39.409—Deadline for Public Comment, and Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing.	2010–004–039–LS .....	July 2, 2010 .....	June 2, 2010 .....	39.409 proposed for approval.

<sup>2</sup> The Texas Natural Resource Conservation Commission is a predecessor agency to the Texas

Commission on Environmental Quality. In general,

this proposed action will refer to the agency as the TCEQ.

TABLE 1—RULES SUBMITTED IN EACH SIP REVISION SUBMITTAL THAT ARE AFFECTED BY THIS PROPOSED ACTION—Continued

Section title	Texas rule project number	State submittal date	State adoption date	Rules addressed in this action
30 TAC 39.411—Text of Public Notice.	99030-039-AD .....	October 25, 1999 .....	September 2, 1999 .....	39.411(a) proposed for approval.
	2010-004-039-LS .....	July 2, 2010 .....	June 2, 2010 .....	39.411(e)(1)–(4)(A)(i) and (iii), (4)(B), (5)(A) and (B), (6)–(10), (11)(A)(i), (iii) and (iv), (11)(B)–(F), (13) and (15), and (f)(1)–(8), (g) and (h) proposed for approval.
30 TAC 39.418—Notice of Receipt of Application and Intent to Obtain Permit.	99030-039-AD .....	October 25, 1999 .....	September 2, 1999 .....	39.418(b)(4) proposed for approval; note that this section was renumbered to 39.418(b)(3) as a result of the July 2010 submittal.
	2010-004-039-LS .....	July 2, 2010 .....	June 2, 2010 .....	39.418(a), (b)(2)(A), (b)(3) and (c) Proposed for approval.
30 TAC 39.419—Notice of Application and Preliminary Decision.	2010-004-039-LS .....	July 2, 2010 .....	June 2, 2010 .....	39.419(e) proposed for approval.
30 TAC 39.420—Transmittal of the Executive Director's Response to Comments and Decision.	2010-004-039-LS .....	July 2, 2010 .....	June 2, 2010 .....	39.420(c)(1)(A)—(D)(i)(I) and (II), (D)(ii), (c)(2), (d)–(e) proposed for approval.
30 TAC 39.601—Applicability ..	2010-004-039-LS .....	July 2, 2010 .....	June 2, 2010 .....	39.601 proposed for approval.
30 TAC 39.602—Mailed Notice	2010-004-039-LS .....	July 2, 2010 .....	June 2, 2010 .....	39.602 proposed for approval.
30 TAC 39.603—Newspaper Notice.	2010-004-039-LS .....	July 2, 2010 .....	June 2, 2010 .....	39.603 proposed for approval.
30 TAC 39.604—Sign-Posting	2010-004-039-LS .....	July 2, 2010 .....	June 2, 2010 .....	39.604 proposed for approval.
30 TAC 39.605—Notice to Affected Agencies.	2010-004-039-LS .....	July 2, 2010 .....	June 2, 2010 .....	39.605 proposed for approval.
30 TAC 55.150—Applicability ..	2010-004-039-LS .....	July 2, 2010 .....	June 14, 2006 .....	55.150 was adopted in 2006 but submitted as part of the 2010 SIP package.
30 TAC 55.152—Public Comment Period.	99030-039-AD .....	October 25, 1999 .....	September 2, 1999 .....	55.152(b) proposed for approval.
	2010-004-039-LS .....	July 2, 2010 .....	June 2, 2010 .....	Subsections 55.152(a)(1), (2), (5) and (6) proposed for approval.
30 TAC 55.154—Public Meetings.	2010-004-039-LS .....	July 2, 2010 .....	June 2, 2010 .....	Subsections 55.154(a), (b), (c)(1)–(3) and (5), (d)–(g) proposed for approval.
30 TAC 55.156—Public Comment Processing.	2010-004-039-LS .....	July 2, 2010 .....	June 2, 2010 .....	Subsections 55.156(a), (b), (c)(1), (e) and (g) proposed for approval.
30 TAC 116.111—General Application.	99030-039-AD .....	October 25, 1999 .....	September 2, 1999 .....	116.111(b) introductory paragraph and (1) and (2) proposed for approval.
30 TAC 116.114—Application Review Schedule.	99030-039-AD .....	October 25, 1999 .....	September 2, 1999 .....	Revisions to 116.114(a)(2) introductory paragraph, new (a)(2)(A), new (a)(2)(B), revisions to (b)(1), and new (c)(1)–(3) proposed for approval.
	2010-004-039-LS .....	July 2, 2010 .....	June 2, 2010 .....	Revisions to 116.114(a)(2)(B) and (a)(2)(C), (c)(2) and revisions to (c)(3) proposed for approval.
30 TAC 116.116—Changes to Facilities.	99030-039-AD .....	October 25, 1999 .....	September 2, 1999 .....	New 116.116(b)(4) proposed for approval.
30 TAC 116.124—Public Notice of Compliance History.	98001-116-AI .....	July 22, 1998 .....	SECTION REPEALED ..	SECTION PROPOSED FOR REPEAL.
30 TAC 116.194—Public Notification and Comment.	2005-010-116-PR .....	February 1, 2006 .....	January 11, 2006 .....	Disapproved by EPA September 15, 2010. See 75 FR 56424.
	2010-004-039-LS .....	July 2, 2010 .....	June 2, 2010 .....	116.194(a) and (b) proposed for approval.
	2010-008-116-PR .....	March 11, 2011 .....	January 11, 2006 .....	Resubmittal of the January 11, 2006 adoption of 116.194 Proposed for approval.

TABLE 1—RULES SUBMITTED IN EACH SIP REVISION SUBMITTAL THAT ARE AFFECTED BY THIS PROPOSED ACTION—Continued

Section title	Texas rule project number	State submittal date	State adoption date	Rules addressed in this action
30 TAC 116.312—Public Notification and Comment Procedures.	98001–116–AI .....	July 22, 1998 .....	June 17, 1998 .....	Repealed previous 116.312 that was SIP approved; New adoption of 116.312 proposed for approval.
	99030–039–AD .....	October 25, 1999 .....	September 2, 1999 .....	Revised to cross-reference Chapter 39 procedures.

*E. What are we not addressing in this proposed action?*

EPA is severing and taking no action on section 116.116(b)(3) as it was submitted on October 25, 1999. Section 116.116(b)(3) applies to the review and permitting of constructed and reconstructed major sources of hazardous air pollutants (HAPs) under section 112(g) of the Act and 40 CFR Part 63, Subpart B. The process for implementing these provisions is carried out separately from a SIP. SIPs cover criteria pollutants and their precursors, as regulated by NAAQS. Section 112(g) of the Act regulates HAPs, this program is not under the auspices of a CAA section 110 SIP, and this program should not be approved into a SIP. Additionally, the submitted section 116.116(b)(3) is severable from the remainder of the Texas public participation submittals. Because the requirements under section 112(g) of the Act and under 40 CFR part 63, Subpart B, EPA is severing and taking no action on section 116.116(b)(3).

Additionally, EPA is severing and taking no action at this time on the following public participation provisions that were submitted as SIP revisions in the July 2, 2010 submittal:

- Sections 39.402(a)(4) and (a)(5) establishing applicability of public notice provisions for new Flexible Permits and amendments to Flexible Permits under 30 TAC Chapter 116. EPA finds it appropriate to sever and take no action on these Flexible Permit provisions because the Flexible Permits Program is not currently in the Texas SIP. We disapproved the Flexible Permits Program on July 15, 2010 (75 FR 41312). EPA's disapproval was remanded for further action on August 13, 2012. *State of Texas, et al. v. EPA*, Case No. 10–60614 (5th Circuit, Aug. 13, 2012). TCEQ has revised its rules for the Flexible Permits Program, but the State has not yet submitted those revised rules. If TCEQ submits revised rules for the Flexible Permits Program in the near future, EPA will analyze the public notice provisions for Flexible Permits

when we take action on that submittal. Alternatively, EPA will analyze and act on the public notice provisions for Flexible Permits when we address the Flexible Permits Program submittal that is in front of us for SIP approval.

- Sections 39.402(a)(10) and 39.419(e)(3) establishing applicability of public notice provisions for applications for permits, registrations, licenses, or other types of authorizations required to construct, operate or authorize a component of the Future Gen. We are severing and taking no action on Section 39.420(h) which establishes response to comment (RTC) procedures for permit applications for Permits for Specific Designated Facilities under 30 TAC Chapter 116, Subchapter L. EPA finds it appropriate to sever and take no action on the Future Gen public notice provisions and the response to comment procedures because we have not yet acted on the underlying Future Gen permit rules at 30 TAC Chapter 116, Subchapter L. We will review and analyze the public notice provisions for Future Gen when we take action on this permit program.

- Section 39.402(a)(12) establishing public participation provisions pertaining to change of location of a portable facility, consistent with the requirements of 30 TAC section 116.178. EPA has not taken action on the underlying permit provisions for the Relocations and Changes of Location of Portable Facilities. We will analyze the public notice provisions for change of location of portable facilities when we take action on the underlying permit provisions at section 116.178.

- Section 39.405(h)(1)(B) providing alternate language newspaper notice requirements for permit applications that are not air quality permit applications. Permit applications that are not air quality permit applications are beyond the scope of the Texas SIP.

### III. Technical Analysis of the Texas Public Participation for Air Quality Permit Applications

The Texas air quality permitting program consists of several different

types of permit actions including permits for new major sources or modifications subject to PSD or NNSR requirements, PAL permit authorizations at existing major sources, new minor sources or minor amendments, and permit renewals. The Texas public participation program is also tiered, providing different levels and scope of public participation to correspond with the type of permit action. The following sections of this proposed action and the accompanying TSD will analyze the public participation process for each type of permit action to determine whether the submitted process is consistent with federal requirements.

The Texas public participation requirements for air quality permit applications are found in three chapters of the TAC: Chapters 39, 55, and 116. Chapter 39 establishes applicability and general processes and requirements for the public notice documentation. Chapter 55 establishes general requirements for public comment periods, public meetings and processing of public comments. Chapter 116 provides general timelines for public comment period and applicability. Each type of air quality permit application follows the same general public notice procedures as outlined below:

1. Applicant submits air quality permit application to TCEQ.

2. TCEQ reviews the application and determines whether the application is administratively complete. During this process, the TCEQ has 90 days to determine the application is complete or request additional information. See 30 TAC 116.114(a)(1).

3. Once the application is administratively complete, the applicant is required to publish the first notice, the Notice of Receipt of Application and Intent to Obtain Permit (NORI), as applicable. See 30 TAC 39.418. The NORI is a unique feature of the Texas Public Notice Process. The NORI provides information to the public about the receipt of an application and provides basic information about the proposed new source or modification

such as a description of the location and the nature of the proposed activity, a description of the public comment process, and the location where materials will be made available for review. The NORI does not provide any technical information, but rather serves as an indicator of future public notices and actions that may be of interest, enabling the public to anticipate draft permits. The NORI is required for all air quality permit applications subject to the Chapter 39 public notice provisions except for PAL permit applications. Note that certain permit amendments are exempted from the Chapter 39 public notice provisions as discussed in Section III.D of this proposed action.

4. TCEQ completes the technical review and makes a preliminary decision. The TCEQ has 180 days from the date a new permit application is administratively complete, or 150 days from the date a permit amendment application is administratively complete, to conduct the technical review and make a preliminary decision. See 30 TAC 116.114(a)(2).

5. The applicant is required to publish the second notice, the Notice of Application and Preliminary Decision (NAPD) when notified by TCEQ of the preliminary decision. See 30 TAC 39.419. The NAPD notice provides the information and notice to the public consistent with federal requirements. The NAPD provides details about the preliminary decision and draft permit and the location where applicable air quality analyses and other technical materials will be made available for public review. Additionally for PSD permit applications, the NAPD includes the degree of increment consumption that is expected. The NAPD is required for all air quality permit applications subject to the Chapter 39 public notice provisions with the exception of permit renewals. The NAPD may be required for permit renewal applications depending on the details of the action. Note that certain permit amendments are exempted from the Chapter 39 public notice provisions as discussed in Section III.D of this proposed action.

6. The TCEQ files the Executive Director's (ED) draft permit and preliminary decision, the preliminary determination summary and air quality analysis with the chief clerk and the clerk posts this information on the TCEQ's Web site. See 30 TAC 39.419(e).

7. The comment period runs for 30 days after the last publication of the NAPD discussed in Step 5. See 30 TAC 55.152(a)(1).

8. A public meeting is held if the ED determines there is a substantial or significant degree of public interest; if

the meeting is requested by a member of the legislature representing the general area of the proposed facility/modification; if a public meeting is otherwise required by law; or, in the case of a PSD or NNSR permits, the meeting is requested by an interested person. See 30 TAC 55.154(c).

9. The ED prepares a response to all comments received. See 30 TAC 55.156(b)(1).

10. The ED files the response to comments with the chief clerk as soon as practicable, but not later than 60 days after the end of the comment period. See 30 TAC 55.156(b)(3).

11. The chief clerk will mail or transmit the ED decision and the RTC to the applicant, any person who submitted comments and any person on the mailing list for the permit action. See 30 TAC 55.156(c).

12. The ED will take final action on the permit application within one year of a complete PSD, NNSR, or PAL permit application. The ED will take final action on the permit application within 150 days of receipt of a permit amendment application or 180 days for a permit application that is not a PSD/NNSR/PAL application (i.e., application for new minor or a renewal application). The TCEQ's one-year clock is based on the completion of the technical review and the publication of the NAPD as provided in Step 5. See 30 TAC 116.114(c)(3).

#### *A. Public Participation for Prevention of Significant Deterioration (PSD) Permit Applications*

##### 1. Analysis of Submitted Rules

Federal public participation requirements for PSD permit applications are at 40 CFR 51.160, 51.161, and 51.166(q). In Texas, 30 TAC 39.402(a)(2) establishes that the requirements found in 30 TAC Chapter 39, Subchapters H and K apply to applications for the new major sources or major modifications for facilities subject to Chapter 116, Subchapter B, Division 6 (PSD permits). Every application for a new major source or major modification subject to PSD permitting requirements will go through public notice with both the NORI and NAPD. Note that the applicant is legally responsible for the publication of the NORI and NAPD, using the specific notice text provided through regulations by the TCEQ. The applicant is also legally responsible for providing copies of the public notice documents to the EPA Regional Office, local air pollution control agencies with jurisdiction in the county, and air pollution control agencies of nearby states that may be

impacted by the proposed new source or modification. The submitted Texas public participation rules establish that the applicant, rather than the State permitting authority, as the legally responsible party for satisfying the public notice requirements for PSD applications. The applicant is required to follow the Texas public notice regulations, which specify the text for the notice documents and specify the additional agencies that will receive notice. EPA is proposing to find that the submitted Texas public participation regulations identifying the applicant as the legally responsible party meet the requirements to provide opportunity for public comment and for information availability at 40 CFR 51.161 and 51.166. The NORI and NAPD both identify locations where materials, including the draft permit and all technical materials supporting the decision, will be made available for public review. The TCEQ will also respond to each comment received when making a final permit decision. The TCEQ will provide opportunity for a public meeting on the permit application if requested.

2. How do the Texas public notice provisions for PSD permit applications address the deficiencies identified in the proposed LA/LD?

On November 26, 2008, EPA identified several deficiencies in the Texas public participation rules specific to new major sources and modifications subject to PSD permitting requirements. See 73 FR 72001, at 72007–72008. Below we reiterate the deficiencies and discuss how the revised Texas public participation process for PSD applications addresses our concerns. Please also see section IV.B. of the accompanying TSD.

- *The public participation rules do not require the TCEQ to provide an opportunity for a public hearing for interested persons to appear and submit written or oral comment on the air quality impact of the source, alternatives to it, the control technology required, and appropriate considerations and to provide notice of the opportunity for a public hearing, as required by 40 CFR 51.166(q)(2)(v).*

In the Texas air permit program, the term "public meeting" is equivalent to EPA's term "public hearing". Section 55.154(a) as submitted July 2, 2010, supports this by stating the purpose of a public meeting is to take public comment. Section 55.154(c)(3) as submitted July 2, 2010, specifies that a public meeting will be held for PSD permit applications when requested by interested persons. Additionally, the

NAPD notice for the PSD permit includes the statement that a public meeting will be held upon request by interested individuals. See 30 TAC 39.411(f)(8)(D). The revised public participation SIP submittals address EPA's concerns and resolve the identified deficiency.

- *The public participation rules do not require that the public notice of a PSD permit contain the degree of increment consumption that is expected from the source or modification as required by 40 CFR 51.166(q)(2)(iii).*

The revised public participation SIP submittals address EPA's concerns. The NAPD notice provisions at 39.411(f)(8)(A) require the public notice document to include the expected degree of increment consumption. Note that the requirement to public notice the expected degree of increment consumption was previously part of paragraph 7 of the Texas PSD Supplement, as submitted to EPA on July 17, 1987, and approved as part of the Texas PSD SIP. On July 2, 2010, the TCEQ officially requested to withdraw this provision of the Texas PSD Supplement from the Texas SIP and requested that EPA approve the provision at 39.411(f)(8) into the Texas SIP in its place. We are proposing that upon final EPA-approval of 30 TAC 39.411(f)(8) into the Texas SIP, EPA will also revise the table at 40 CFR 52.2270(e) to state that the corresponding commitment in paragraph 7 of the PSD supplement has been removed from the Texas SIP and replaced by SIP-approved regulation at 39.411(f)(8)(A).

- *The public participation rules do not require a copy of the public notice of a PSD permit to be sent to State and local air pollution control agencies, the chief executives of the city and county where the source would be located and any State or Federal Land Manager or Indian Governing Body whose lands may be affected by emissions from the source or modification, as required by 40 CFR 51.166(q)(2)(iv).*

The revised public participation SIP submittals address EPA's concerns. Section 39.605 specifies that the applicant will provide a copy of the public notice to the list of individuals who will receive notice of PSD permit applications, consistent with federal requirements. Note that the requirement to send a copy of the public notice of a PSD permit application was previously part of paragraph 7 of the Texas PSD Supplement, as submitted to EPA on July 17, 1987, and approved as part of the Texas PSD SIP. On July 2, 2010, the TCEQ officially requested to withdraw this provision of the Texas

PSD Supplement from the Texas SIP and requested that EPA approve the provision at 39.605 into the Texas SIP in its place. We are proposing that upon final EPA-approval of 30 TAC 39.605 into the Texas SIP, EPA will also revise the table at 40 CFR 52.2270(e) to state that the corresponding commitment in paragraph 7 of the PSD supplement has been removed from the Texas SIP and replaced by SIP-approved regulation at 39.605(1)(D).

- *The public participation rules do not require that a response to comments be available prior to final action on the PSD permit, as required by 40 CFR 51.166(q)(2)(vi) and (viii).*

The current public participation SIP submittals address EPA's concerns and resolve the identified deficiency. EPA's PSD rules do not require that a permitting authority provide a response to comments prior to final action on the PSD permit. Rather, EPA's rules at 40 CFR 51.166(q)(2)(vi) require that the permitting authority consider all timely comments and make said comments available at the same location as the preconstruction materials used in the permitting decision. The Texas rules at 30 TAC 55.156(b)(1) comply with EPA regulations by requiring that the TCEQ consider all timely, relevant and material, or significant public comment before an application is approved. Further, when making PSD permit decisions, 30 TAC 55.156(b)(1) specifically requires that the TCEQ ED prepare a response to *all* comments received. The Texas rules at 30 TAC 55.156(b)(1) also require that a response to comments document be prepared prior to the final action on the permit. Interested individuals have access to the response to comments document for each permitting action through the TCEQ's Web site; the address of which is provided in each NAPD notice. The RTC includes a summary of each comment received. The actual comment letters can be obtained from the TCEQ offices.

### 3. Proposed Findings Specific to the Texas Public Participation Provisions for PSD Permit Applications

EPA's analysis of the Texas public participation requirements for PSD permit applications demonstrates that the submitted provisions are consistent with the Act and EPA regulations at 40 CFR 51.160, 51.161 and 51.166(q). Further, the submitted provisions address all deficiencies previously cited in our November 26, 2008 proposed limited approval/limited disapproval of Texas public notice requirements. Therefore, we propose full approval of the Texas public notice provisions for

PSD permit applications submitted on July 22, 1998; October 25, 1999; and July 2, 2010.

### B. Public Participation for Nonattainment New Source Review (NNSR) Permit Applications

#### 1. Analysis of Submitted Rules

Federal public participation requirements for NNSR permit applications are at 40 CFR 51.160 and 51.161. Submitted section 30 TAC 39.402(a)(2) establishes that the requirements found in 30 TAC Chapter 39, Subchapters H and K apply to applications for new major sources or major modifications for facilities subject to Chapter 116, Subchapter B, Division 5 (NNSR permits). Every application for a new major source or major modification subject to NNSR permitting requirements will go through public notice with both NORI and NAPD. Note that the applicant is legally responsible for the publication of the NORI and NAPD, using the specific notice text provided through regulations by the TCEQ. The applicant is also legally responsible for providing copies of the public notice documents to the EPA Regional Office, local air pollution control agencies with jurisdiction in the county, and air pollution control agencies of nearby states that may be impacted by the proposed new source or modification. The submitted Texas public participation rules establish the applicant, instead of the State permitting authority, as the legally responsible party for satisfying the public notice requirements for PSD applications. The applicant is required to follow the Texas public notice regulations, which specify the text for the notice documents and specify the additional agencies that will receive notice. EPA is proposing to find that the submitted Texas public participation regulations identifying the applicant as the legally responsible party meet the requirements to provide opportunity for public comment and for information availability at 40 CFR 51.161. The NORI and NAPD both identify locations where materials, including the draft permit and all technical materials supporting the decision, will be made available for public review. The TCEQ will respond to each comment received when making a final permit decision. The TCEQ will also provide opportunity for a public meeting on the permit application if requested.

## 2. Proposed Findings Specific to the Texas Public Participation Provisions for NNSR Permit Applications

As explained fully in the accompanying TSD, EPA finds that the public notice process described above for NNSR permit applications satisfies the federal requirements for public notice found at 40 CFR 51.160, 51.161. Also, EPA did not identify any NNSR-specific deficiencies in our November 26, 2008 proposed limited approval/limited disapproval. Therefore, we propose full approval of the Texas public notice provisions for NNSR permit applications submitted on July 22, 1998; October 25, 1999; and July 2, 2010.

### C. Public Participation for Plant-Wide Applicability Limit (PAL) Permit Applications

#### 1. Analysis of Submitted Rules

Federal public participation requirements for PALs are established at 40 CFR 51.165(f)(4)(B) and (f)(5) and 51.166(w)(4)(b) and (w)(5). Each of these sections specify that PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 40 CFR 51.160 and 51.161. Additionally, sections 51.165(f)(5) and 51.166(w)(5) require the reviewing authority provide the public with notice of the proposed approval of a PAL permit; at least a 30-day period for submittal of public comment; and the reviewing authority must address all material comments before taking final action on the permit. Submitted Section 39.402(a)(8) establishes that the requirements found in 30 TAC Chapter 39, Subchapters H and K apply to applications for the establishment or renewal of, or an increase in, plant-wide applicability limit permits under 30 TAC Chapter 116, Subchapter C. Unlike the public notice provisions for PSD and NNSR permit applications, the Texas public notice process for PAL permit applications only requires publication of the NAPD. Because the NORI is a unique element to the Texas permit program that is not federally required, the NAPD is sufficient to satisfy federal requirements for notice. The Texas rules at 30 TAC 55.152(a)(1) require a 30-day comment period following the publication of the NAPD. And TCEQ's comment processing procedures at 30 TAC 55.156(b)(1) require that the TCEQ ED prepare a response to *all* comments received for any application for the establishment or renewal of, or an increase in, a PAL permit.

2. How do the Texas public notice provisions for PAL permit applications address the deficiencies identified in the proposed LA/LD?

On November 26, 2008, EPA identified several PAL-specific deficiencies in the Texas public participation rules. See 73 FR 72001, at 72008. Below we reiterate the deficiencies and discuss how the revised Texas public participation process for PAL applications addresses our concerns. Please also see section IV.D. of the accompanying TSD.

- *For PALs for existing major stationary sources, there is no provision that PALs be established, renewed, or increased through a procedure that is consistent with 40 CFR 51.160 and 51.161, including the requirement that the reviewing authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment, consistent with federal PAL rules at 40 CFR 51.165(f)(5) and (11) and 51.166(w)(5) and (11).*

The July 2, 2010 public participation submittal includes section 39.402(a)(8). Section 39.402(a)(8) specifies that the Chapter 39 provisions apply to the applications for the establishment or renewal of, or an increase in, PAL permit. Tables IV.D-1 and D-2 in our TSD demonstrate that the July 2, 2010 submittal satisfies requirements at 40 CFR 51.160 and 161. Table IV.D-3 in our TSD demonstrates how the July 2, 2010 submittal satisfies 40 CFR 51.165(f)(5) and (11) and 51.166(w)(5) and (11). The July 2, 2010 public participation submittal addresses EPA's concerns and resolves the identified deficiency.

- *For PALs for existing major stationary sources, there is no requirement that the State address all material comments before taking final action on the permit, consistent with 40 CFR 51.165(f)(5) and 51.166(w)(5).*

Sections 39.411(e)(4)(A)(i), 39.411(f)(1) and 55.156(b)(1) as submitted July 2, 2010 satisfy the requirement that the TCEQ address all comments before approving a PAL permit application. The July 2, 2010 public participation submittal addresses EPA's concerns and resolves the identified deficiency.

- *The applicability provision in section 39.403 does not include PALs, despite the cross-reference to Chapter 39 in Section 116.194.*

The July 2, 2010 public participation submittal included section 39.402(a)(8). Section 39.402(a)(8) specifies that the Chapter 39 provisions apply to the applications for the establishment or

renewal of, or an increase in, a PAL permit. The July 2, 2010 public participation SIP submittal addresses EPA's concerns and resolves the identified deficiency.

## 3. Proposed Findings Specific to the Texas Public Participation Provisions for PAL Permit Applications

EPA's analysis of the Texas public participation requirements for PAL permit applications demonstrates that the submitted provisions are consistent with the Act, EPA regulations at 40 CFR 51.160, 51.161, 51.165(f)(4)(B) and (f)(5) and 51.166(w)(f)(4)(b) and (w)(5). Further, the submitted rules address all deficiencies previously cited in our November 26, 2008 proposed limited approval/limited disapproval of Texas public notice requirements. Therefore, we propose full approval of the Texas public notice provisions for PAL permit applications submitted on July 2, 2010, and March 11, 2011.

### D. Public Participation for Minor NSR Permit Applications

#### 1. Analysis of Submitted Rules

TCEQ's revised regulations for public participation increase opportunities for public involvement in Minor NSR permitting decisions compared to the current SIP-approved provisions. TCEQ's current SIP-approved rules at 30 TAC 116.130(a) require public notice with the NORI and NAPD for every application for a new minor source. However, for permit amendment applications, the current SIP-approved rules only require public notice at the discretion of the TCEQ Executive Director. This means that under the existing SIP-approved regulations, many permit amendments are not subject to public notice requirements, and that these rules do not specifically define the conditions upon which the Executive Director can require public notice. TCEQ's revised rules continue to require that *all* applications for new Minor NSR sources go through full public notice with the NORI and NAPD, improve the public notice opportunities for permit amendments, and define conditions for use of the Executive Director's discretion.

TCEQ's revised rules enhance public participation by creating tiered, public notice requirements for permit amendments. Unlike the existing SIP regulations, the revised rules now require that most of permit amendments go through full public notice with the NORI and NAPD. This includes changes to the permits that authorize a change in the character of emissions or a release of an air contaminant not previously



authorized, and changes that increase emissions above certain thresholds. But, the new rules retain and refine the TCEQ's director's discretion provisions for two specific types of minor permit amendments—for “de minimis” or “insignificant” activities. For these amendments, TCEQ will not automatically require an opportunity for public participation. TCEQ justified its approach for permit amendment applications with emissions less than these thresholds using *de minimis* principles like those established in *Alabama Power*.<sup>3</sup>

Despite these thresholds however, the TCEQ revised rules vest the TCEQ Executive Director with the authority to require public notice for an otherwise exempt permit amendment if there is (1) reasonable likelihood of significant public interest in the activity, (2) reasonable likelihood for emissions impact at a nearby receptor, (3) reasonable likelihood of high nuisance potential from the operation of the facility, or (4) the application involves a facility in the lowest classification under Texas Water Code, Section 5.753 and 5.754 and the Compliance History Rules at 30 TAC Chapter 60.

In sum, the applicability of the Texas public participation requirements for Minor NSR permit applications is outlined at 30 TAC 39.402 as follows:

- New minors—39.402(a)(1). A new minor source can be any source statewide that submits a permit application under Chapter 116, Subchapter B that is not subject to the requirements for new major sources or major modifications for NNSR or PSD at Chapter 116, Subchapter B, Divisions 5 and 6.<sup>4</sup>
- Air quality amendments<sup>5</sup> under 30 TAC Chapter 116. Note that a permit

<sup>3</sup> See *Ala. Power Co. v. Costle*, 636 F.2d 323 (D.C. Cir. 1979).

<sup>4</sup> New minor permit actions do not include Permits-by-Rule (PBRs) or Standard Permits (SPs). New minor permit actions are authorized under the SIP-approved provisions at 30 TAC Chapter 116, Subchapter B. PBRs and SPs are separately authorized under SIP-approved provisions at 30 TAC Chapter 106 and Chapter 116, Subchapter F, respectively. Public notice for PBRs and SPs is outside the scope of the state's July 2, 2010 SIP submittal or the action today.

<sup>5</sup> EPA SIP-approved the Texas permit amendment process at 30 TAC 116.116(b)(1) and (b)(2) on November 14, 2003 as adopted by the TCEQ on August 9, 2000 (see 68 FR 64543). These provisions provide that the permit holder shall not vary from any representation or permit condition without obtaining a permit amendment if the change will cause (A) a change in the method of control of emissions; (B) a change in the character of the emissions; or (C) an increase in the emission rate of any air contaminant. Further, any applicant who requests permit amendments must receive prior approval by the TCEQ ED or the commission. Applications for amendments are subject to the requirements of 30 TAC 116.111. The current SIP

amendment is a SIP-approved revision mechanism for an existing Chapter 116, Subchapter B permit. Minor amendments can occur at minor sources or sources that are major for PSD or NNSR whenever:

(a) A change occurs in the character of emissions or release of an air contaminant not previously authorized under the permit (i.e., change in control method or an increase in emission rate)—39.402(a)(3)(A);

(b) The total emissions increase from all facilities to be authorized under the amended permit at a facility not affected by THSC, section 382.020,<sup>6</sup> exceeds the State's established “de minimis” levels—39.402(a)(3)(B);

(c) The total emissions increase from all facilities to be authorized under the amended permit at a facility affected by THSC, section 382.020, exceeds the State's established “insignificant” levels—39.402(a)(3)(C); or

(d) Other minor amendments where the Executive Director determines reasonable likelihood for interest or impact—39.402(a)(3)(D)(i)–(iv).

- Applications for concrete batch plants without enhanced controls authorized by a standard permit under 30 TAC Chapter 116, Subchapter F<sup>7</sup>—39.402(a)(11).

The notice requirements for each type of Minor NSR permit application listed above are generally the same—meaning that a permit amendment will have the same public notice requirements as an application for a new minor source. The submitted Texas rules generally provide that the identified Minor NSR permit applications (all new minor sources, qualifying minor permit amendments, and concrete batch plants without enhanced controls authorized by a standard permit<sup>8</sup>) will go through

requirements of 30 TAC 116.111 were SIP-approved by EPA on August 28, 2007 as adopted by the TCEQ on August 21, 2002 (see 72 FR 49198).

<sup>6</sup> THSC, § 382.020 establishes emission control requirements for selected agricultural facilities such as cotton gins, corn mills, grain elevators, peanut processing and rice drying facilities. THSC § 382.020 applies statewide.

<sup>7</sup> EPA SIP-approved the Texas Standard Permit process and public participation process on November 14, 2003, as adopted by TCEQ on December 16, 1999 (see 68 FR 64543). EPA also SIP-approved revisions to the public participation process for the development of standard permits on September 17, 2008, as adopted by TCEQ September 20, 2006 (see 73 FR 53716).

<sup>8</sup> There are two standard permits applicable to concrete batch plants in the Texas Standard Permit program at 30 TAC Chapter 116, Subchapter F. As discussed previously, EPA approved revisions to the public participation process for the development of standard permits on September 17, 2008, as adopted by TCEQ September 20, 2006 (see 73 FR 53716). Under the Texas SP Program, SPs for concrete batch plants with enhanced controls (i.e., more extensive controls than adequate suction

public notice consistent with federal requirements at 40 CFR 51.160 and 51.161. These types of Minor NSR permit applications are required to have both NORI and NAPD; therefore, the public will receive notice of the application and have the opportunity to comment on the draft permit and accompanying technical information. Note that the applicant is legally responsible for the publication of the NORI and NAPD, using the specific notice text provided through regulations by the TCEQ. The applicant is also legally responsible for providing copies of the public notice documents to the EPA Regional Office, local air pollution control agencies with jurisdiction in the county, and air pollution control agencies of nearby states that may be impacted by the proposed new source or modification. EPA is proposing to find that the submitted Texas public participation regulations identifying the applicant as the legally responsible party meet the requirements to provide opportunity for public comment and for information availability at 40 CFR 51.161. The NORI and NAPD both identify locations where materials, including the draft permit and all technical materials supporting the decision, will be made available for public review. The TCEQ will respond to each comment received when making a final permit decision. The TCEQ will also provide opportunity for a public meeting on the permit application if requested.

## 2. Minor NSR Public Notice Requirements Specific to Two Types of Minor NSR Permit Amendment Applications

As explained above, the submitted Texas public participation provisions create a tiered program, wherein two certain types of Minor NSR amendment applications that have been defined by TCEQ as “de minimis” or “insignificant” will not automatically require public notice. The following outlines the specific thresholds that qualify as “de minimis” or “insignificant” under the revised rules, and the basis for TCEQ's determination.

### i. Identification of the Minor NSR Emission Thresholds and Affected Source Populations

- Thresholds are only used for permit *amendment* applications. Applications for new Minor NSR sources are now required by these submitted rules to go

shrouds and filters as specified in the SP) go through no further public notice. However, concrete batch plants without enhanced controls as identified in the SP program are subject to NORI and NAPD publication under 30 TAC Chapter 39.

through the public procedures of the NORI and NAPD. The minor permit amendment applications are further divided based on the amount of emission increases at issue and whether the facility is affected by THSC section 382.020.

- THSC section 382.020 applies to an agricultural facility such as corn mill, cotton gin, feed mill, grain elevator, peanut processing facility or rice drying facility.

- Section 39.402(a)(3)(B) provides that if the permit amendment application is not for an affected agricultural facility then the public notice provided through the NORI and NAPD apply, unless the total emissions increase from all facilities authorized in the amendment does not exceed any of the following levels established by the State as “de minimis” levels:

- 50 TPY CO
- 10 TPY SO<sub>2</sub>
- 0.6 TPY lead
- 5 TPY of NO<sub>x</sub>, VOC, PM, or any

other contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

- Section 39.402(a)(3)(C) provides that if the permit amendment is for an affected agricultural facility, then the public notice requirements of the NORI and NAPD apply, unless the total emissions increase from all authorized facilities in the amendment does not exceed any of the following thresholds established by the State as “insignificant” thresholds:

- 250 TPY CO or NO<sub>x</sub>
- 25 TPY of VOC, SO<sub>2</sub>, PM or any other air contaminant except CO<sub>2</sub>, H<sub>2</sub>O, N<sub>2</sub>, CH<sub>4</sub>, C<sub>2</sub>H<sub>6</sub>, H<sub>2</sub> and O<sub>2</sub>.
- A new major stationary source or major modification threshold as defined in section 116.12 of this title
- A new major stationary source or major modification threshold, as defined in 40 CFR 52.21 under the PSD requirements

- If the permit amendment application includes proposed emissions increases of any air contaminant above the identified threshold then the amendment application is required to go through notice pursuant to Chapter 39 requirements. That means the permit amendment application will go through the NORI and NAPD publication process.

ii. How were the “De minimis” and “Insignificant” thresholds for minor NSR permit amendments established?

(A). Texas “De Minimis” Thresholds for Minor Permit Amendments

The thresholds established by the State as “de minimis” thresholds apply

to all minor permit amendment applications, except those for affected agricultural facilities. The Texas “de minimis” thresholds submitted on July 2, 2010, were originally adopted by the TCEQ in 2001 after a rulemaking process consistent with the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001. TCEQ solicited, received and responded to comments during the 2001 rulemaking process. The TCEQ provided further opportunity to comment on the scope of its minor NSR program, and on the selected “de minimis” thresholds during the proposal of the July 2010 rulemaking, but there were no additional comments on the “de minimis” threshold values.

During the State’s rulemaking process for the current Texas public participation rules that have been submitted to the EPA, the TCEQ reviewed its rationale for the scope of the minor NSR program and its rationale for the selection of the “de minimis” thresholds. TCEQ found that the rationale developed in 2001 was still relevant and factual; therefore the rationale was resubmitted as part of the July 2, 2010 Public Participation SIP submittal. The TCEQ presents the rationale for the selection of the “de minimis” thresholds in the June 18, 2010 Texas Register, pages 5226–5228. The “de minimis” thresholds are generally based on EPA’s significant emission rates and significant impact levels (which are themselves a percentage of the applicable NAAQS) that together are used to determine whether a proposed source or modification will have a significant impact. The TCEQ also accounted for all averaging periods for each NAAQS in the development of the “de minimis” thresholds.

For example, in developing the “de minimis” threshold for SO<sub>2</sub>, the TCEQ noted that EPA’s federal significance level of 40 TPY was based on a design value concentration of 4% of the 24-hour NAAQS. See 45 FR 52675, at 52705–52710 (August 7, 1980), for further information on how EPA established the significance levels for criteria pollutants. The TCEQ determined that a “de minimis” emission rate of 10 TPY is more appropriate because it is based on a design value concentration of 1% of the lowest significant impact level (SIL) to NAAQS ratio that would trigger a detailed air quality analysis for any of the three SO<sub>2</sub> NAAQS averaging periods.

Within the scope of the Texas Minor NSR program, the “de minimis” thresholds distinguish those minor

permit amendment applications that require full review from those that may not. But, the thresholds do not affect any part of the technical review of these minor permit amendment applications or the requirement to comply with other requirements such as application of required control technology, reporting when required to the emissions inventory, and analysis of monitoring data. Additionally, being below the “de minimis” threshold does not override any notice or technical requirements for PSD, NNSR or new Minor NSR permit applications. We propose to find that TCEQ provided an adequate demonstration to show that their selected “de minimis” thresholds for permit amendments are based on insignificant emission rates and insignificant emissions impact.

(B). Texas “Insignificant” Thresholds for Minor Permit Amendments for Selected Agricultural Facilities

The thresholds selected by the State and called “insignificant” thresholds apply only to minor permit amendment applications for affected agricultural facilities. TCEQ originally adopted the “insignificant” thresholds submitted on July 2, 2010, for minor permit amendment applications at affected agricultural facilities in 2001 after a rulemaking process consistent with the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001. TCEQ solicited, received, and responded to comments during the 2001 rulemaking process. The TCEQ provided further opportunity to comment on the selected “insignificant” thresholds during the proposal of the July 2010 rulemaking but received no additional comments on the “insignificant” threshold values.

During the rulemaking process for the current Texas public participation rules, the TCEQ reviewed the rationale for the selection of the “insignificant” thresholds. TCEQ found that the rationale developed in 2001 was still relevant and factual; therefore the rationale was resubmitted as part of the July 2, 2010 Public Participation SIP submittal. The TCEQ presents the rationale for the selection of the “insignificant” thresholds in the June 18, 2010 Texas Register, pages 5228–5230. TCEQ states that its discretionary public participation program for selected agricultural facilities with emissions increases below the State’s defined “insignificant” thresholds is “intended to focus the attention of the public and the commission on emission increases that could have a greater potential for public interest and

questions regarding impacts to public health and welfare.”

TCEQ further provided a review of the sources subject to THSC 382.020 from September 2001 through March 2010. This review indicates that the TCEQ processed 356 permit amendment applications for subject agricultural facilities. These agricultural facilities are located in approximately 88 counties, many of which are rural areas in west Texas, and many of these applications were associated with cotton gins. These amendment applications accounted for about 10% of the amendment applications for all types of facilities (not just these selected agricultural facilities) processed during that time period. The primary pollutant of concern in these applications is particulate matter (PM). No area in Texas is designated as nonattainment for PM<sub>2.5</sub> (or PM less than 2.5 microns in diameter). El Paso, Texas is designated as nonattainment for PM<sub>10</sub> (or PM less than 10 microns in diameter); but the designation is based on historical transport of particulate emissions from the Ciudad Juarez, Mexico area. See 59 FR 02532, January 18, 1994. TCEQ reviewed dispersion modeling results from 1990 and 1994 and found that El Paso would be in attainment for the PM standards, but for the emissions transport from Ciudad Juarez. Because the TCEQ has issued no nonattainment or PSD permits for agricultural facilities in the El Paso area and none of the permit amendment applications during the applicable time period were for facilities in El Paso County, the TCEQ has determined that PM emissions generated by the handling, loading, unloading, drying, manufacturing or processing of grain, seed, legumes or vegetable fibers are not of concern in El Paso. Further, the TCEQ has only issued one PSD permit statewide for an agricultural facility under THSC 382.020, and that is for a brewery. Therefore, TCEQ concluded that the “insignificant” thresholds for agricultural facilities would not negatively impact the El Paso area or any other area in Texas.

Like the selected “de minimis” thresholds, the state’s chosen “insignificant” thresholds are used to distinguish those agricultural facilities for which permit amendments require full review from those that may not. However, within the scope of Texas’s revised rules, the thresholds do not affect any part of the technical review of these permit amendment applications; or the requirement to continue to comply with other requirements such as application of appropriate control technology, reporting when required to

the emissions inventory, and analysis of monitoring data. Further, the discretionary public notice for minor permit amendments at selected agricultural facilities does not override any notice or technical requirements for PSD, NNSR or new Minor NSR permit applications. We believe that TCEQ provided an adequate demonstration to show that their selected “insignificant” thresholds for permit amendments for selected agricultural facilities are limited in scope, apply to a limited subcategory of sources, and represent a small subset of the permit amendment universe. We propose to find this demonstration meets 40 CFR 51.160 and 51.161.

3. How do the Texas public notice provisions for minor NSR permit applications address the deficiencies identified in the proposed LA/LD?

The Federal requirements for Minor NSR permit applications and public notice requirements are at 40 CFR 51.160 and 161. These requirements establish the minimum requirements for approvability of a state’s Minor NSR SIP, which a state develops to prevent construction and modification of stationary sources from interfering with an area’s ability to achieve compliance with a NAAQS. These requirements generally require 30 days public review for all sources subject to the Minor NSR; however, these requirements also allow a State to identify the types and sizes of facilities, buildings, structures, or installations, which will require full preconstruction review by justifying the basis for the State’s determination of the proper scope of its program.<sup>9</sup> Importantly, our decision to approve a State’s scope of its Minor NSR program must consider the individual air quality concerns of each jurisdiction, and therefore will vary from state to state.

On November 26, 2008, EPA identified several Minor NSR-specific deficiencies in the Texas public participation rules. See 73 FR 72001, at 72007. Below we reiterate the deficiencies and discuss how the revised Texas public participation process for Minor NSR applications submitted for EPA approval on July 2, 2010, address our concerns. In sum, as discussed more fully in the following section, we propose to find that the July 2, 2010 submitted Tiered public participation requirements improve

<sup>9</sup>For example, under the federal Tribal NSR regulations, EPA did not require permits for sources with emissions below “de minimis” levels, and for sources in “insignificant source categories”. 76 FR 38748, at 38755. In sum, under these Tribal NSR regulations, some sources are not required to obtain permits, and have no public notice requirements.

upon the existing SIP-approved requirements for public notice, that the rules resolve the concerns we expressed in November 2008, and that the regulations satisfy the requirements of 51.160 and 51.161.

Please note that the July 2, 2010 public participation SIP submittal reorganized and restructured some of the previous rule language. As such, the italicized passages below contain references to specific rule citations and provisions that do not have a direct corollary to the July 2, 2010 rules before us now. See the discussion in section I.B of this proposed action for a history of the Texas Public Participation rule submittals. The bulleted list and subsequent analysis demonstrates that the deficiencies EPA previously identified on November 26, 2008, have been addressed through the current public participation submittal of July 2, 2010. Please also see section IV.E. of the accompanying TSD.

- *Under section 39.419(e) for new or modified Minor NSR sources or minor modifications at major sources, the rules do not require public notice and the opportunity for comment on the State’s analysis of the effect of construction or modification on ambient air quality, including the agency’s proposed approval or disapproval, as required by 40 CFR 51.161(a) and (b), unless a contested case hearing is requested and not withdrawn after notice of application and intent to obtain a permit (NORI) is published.*

The July 2, 2010 public participation SIP submittal has expanded the requirement to publish the NAPD to all new minor sources or minor modifications under Chapter 116, Subchapter B. See 30 TAC 39.419(e). As demonstrated in the accompanying TSD, the NAPD notice is consistent with 40 CFR 51.161(a) and (b) to provide notice and opportunity to comment on the state’s analysis and the preliminary determination. The public participation provisions submitted July 2, 2010 address the identified deficiency.

- *Under section 39.402(a)(3)(C) [Note that during the proposed LA/LD the section we cited was section 39.403(b)(8), this section number was changed to 39.402(a)(3)(C) when the rule was submitted July 2, 2010], for a Minor NSR permit amendment or minor modification under section 116.116(b), (where there is a change in the method of control of emissions; a change in the character of the emissions; or an increase in the emission rate of any air contaminant) the existing SIP requires the permit holder to apply for and receive approval of a permit amendment. However, the revised rules*

[submitted October 25, 1999] do not require any public participation as required by 40 CFR 51.161(a) and (b) unless the change involves construction of a new facility or modification of an existing facility that results in an increase in allowable emissions equal to or greater than 250 tpy of CO or NO<sub>x</sub>; or 25 tpy of VOC or SO<sub>2</sub> or PM<sub>10</sub>; or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen or other changes within the discretion of the Executive Director.

The concern as stated at the time of our proposed LA/LD was that a permit amendment below the identified thresholds would not receive public notice. Nonetheless, as explained above, EPA recognizes a State's ability to tailor the scope of its minor NSR program as necessary to achieve and maintain the NAAQS. As outlined above, the State justified the scope of its regulatory program, and thus the permit applications for which full public review is necessary using *de minimis* principles like those established in *Alabama Power* to identify amendments that are not environmentally significant. Specifically, it identified "de minimis" and "insignificant" thresholds for which review with public participation may or may not be necessary depending on whether the amendment triggers public review under the specified Executive Director's criteria.

- Under section 39.419(e)(1)(C), for any amendment, modification or renewal of a major or minor source which requires a permit application, the rules do not require public notice and the opportunity for comment on the State's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval, as required by 40 CFR 51.161(a) and (b), if the amendment, modification, or renewal would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted unless the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

At the time of the November 26, 2008 proposed limited approval/limited disapproval, section 39.419 included subsection (e)(1)(C) which exempted minor NSR permit applications from publication of the second notice, or

NAPD. In response to our proposed limited approval/limited disapproval, the TCEQ expanded the publication of the NAPD to cover Minor NSR permit applications and specified Minor NSR permit amendment applications. The July 2, 2010 public notice SIP submittal requires NORI and NAPD public notice for all new minor sources and all permit amendments above identified "de minimis" and "insignificant" emission thresholds. For permit amendment applications with emissions less than these thresholds, the TCEQ justified its approach using *de minimis* principles like those established in *Alabama Power*. See the June 18, 2010 Texas Register, pages 5224–5230. Additionally, requiring NORI and NAPD notice for amendments above a specified emissions threshold is more stringent than the existing SIP; which only requires public notice of minor amendments at the discretion of the Executive Director. The July 2, 2010 SIP submittal addresses the identified concerns.

- Section 39.403(b)(8), *Applicability, of the revised rule refers to two State statutory provisions, THSC section 382.0518 (preconstruction permit) and section 382.055 (review and renewal of preconstruction permit). For clarity, and for approvability into the SIP, section 39.403(b) should be revised to refer to the corresponding sections of the Texas SIP.*

Subsequent to our withdrawal of the proposed rule, EPA has determined that this provision does not contravene federal requirements. Generally, we do not approve cross-references that are not otherwise SIP-approved. But, in these instances, the statutory provisions serve to provide more clarity to the subset of sources identified in the rule language. Note that since the time of the proposed limited approval/limited disapproval, TCEQ has withdrawn from our consideration the prior version of Chapter 39 that was submitted for SIP approval, and resubmitted a new version of Chapter 39. The sections discussing Applicability of the public participation program that include cross-references to statutes are now located at Section 39.402(a)(3)(B) and (C). In this instance, the statute mentioned is THSC section 382.020 concerning agricultural facilities. Inclusion of the statutory citation to THSC section 382.020 provides additional clarity to the submitted provision.

#### 4. Proposed Findings Specific to the Texas Public Participation Provisions for Minor NSR Permitting

We propose to find that the July 2, 2010 submitted public notice provisions, including the tiered public participation approach for permit amendments, improve upon the existing SIP-approved requirements for public notice by expanding opportunities for public involvement in minor NSR permitting decision. We further propose to find that TCEQ's demonstrations in the July 2, 2010 public notice SIP submittal adequately justify the scope of activities that require full review with public participation, because it potentially excludes only those permit amendments that meet the state's selected "de minimis" and "insignificant" thresholds that the State has shown are environmentally insignificant. Accordingly, EPA proposes to find that TCEQ's tiered public participation program satisfies the provisions of 51.160(e) and 51.161. Moreover, we also propose to find that the TCEQ revised rules for discretionary public notice are approvable, because the provisions adequately confine Executive Director discretion by authorizing the use of discretion under specified criteria that are consistent with the goals and purposes of the Act to provide an adequate opportunity for informed public participation. EPA is proposing to find that the submitted Texas public participation regulations identifying the applicant as the legally responsible party also meet the requirements to provide opportunity for public comment and for information availability at 40 CFR 51.161, because the NORI and NAPD both identify locations where materials, including the draft permit and all technical materials supporting the decision will be made available for public review and the required information is submitted to EPA.

Finally, as explained above, we propose to find that the submitted provisions address all deficiencies we previously cited in our November 26, 2008 proposed limited approval/limited disapproval of Texas public notice requirements. Accordingly, we propose full approval of the Texas public notice provisions for Minor NSR permit applications submitted on July 22, 1998; October 25, 1999; and July 2, 2010.

#### E. Public Participation for Permit Renewal Applications

##### 1. Analysis of Submitted Rules

EPA SIP-approved the Texas provisions for renewal of Title I permits at 30 TAC Chapter 116, Subchapter D,

Sections 116.310–116.315, on March 10, 2006 (71 FR 12285), with revisions approved on March 20, 2009 (74 FR 11851), March 11, 2010 (75 FR 11464) and November 14, 2011 (76 FR 70354). Therefore, permit renewals issued under 30 TAC Chapter 116, Subchapter D are SIP-approved Title I permits and we have evaluated the public participation requirements for said permits. Section 39.402(a)(6) establishes that the requirements found in 30 TAC Chapter 39, Subchapters H and K apply to applications for renewal of Chapter 116 permits. Section 116.312, Public Notification and Comment Procedures specific to permit renewals, provides a cross-reference to the public participation rules under Chapter 39. Generally, permit renewal applications are required to publish NORI and provide a 15-day comment period. In some instances, permit renewal applications will be required to publish NAPD and provide a 30-day comment period. The TCEQ is required to respond to any comments received and provide a response to comments with the final permit decision. Under the Texas SIP-approved permit renewal process, a Title I permit is required to be renewed every ten years. A permit renewal application is approved based upon a demonstration in the renewal application that the permitted facility will operate in accordance with all requirements and conditions of the existing permit, including representations in the application to construct, any subsequent amendments, any previously granted renewal, and the compliance history of the facility. Parts C and D of the Act and EPA's federal NSR requirements regulate preconstruction of sources and neither prohibit, nor require Title I permits (PSD/NNSR/Minor NSR) to be periodically renewed. As such, the State's renewals provisions go beyond the minimum requirements of the Act. While neither the Act nor EPA's regulations address the public notice of permit renewals, we propose to find that approval of public notice for permit renewals will enhance the SIP-approved renewals program.

## 2. Proposed Findings Specific to the Texas Public Participation Provisions for Permit Renewal Applications

As explained fully in the accompanying TSD, EPA proposes to find that the public notice process described above for permit renewal applications satisfies the federal requirements for public notice found at 40 CFR 51.160 and 51.161 and is consistent with the requirements at section 110(a)(2)(C) of the Act to

provide continued implementation and enforcement of the NSR SIP permitting program. EPA did not identify any renewal-specific deficiencies in our November 26, 2008 proposed limited approval/limited disapproval. Therefore, we propose full approval of the Texas public notice provisions for permit renewal applications submitted on July 22, 1998; October 25, 1999; and July 2, 2010.

### *F. Does proposed approval of the Texas public participation provisions for air quality permit applications interfere with attainment, reasonable further progress, or any other applicable requirement of the Act?*

Section 110(l) of the CAA states: *Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.*

Thus, under section 110(l), the regulations submitted as a SIP revision for public participation for air quality permit applications must meet the procedural requirements of section 110(l) by demonstrating that the State followed all necessary procedural requirements such as providing reasonable notice and public hearing of the SIP revision. Additionally, the SIP revision must demonstrate that the adopted rules will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. We propose to find that the TCEQ satisfied all procedural requirements pursuant to section 110(l) as detailed in our accompanying TSD.

Public participation in air quality permitting is a requirement of the CAA. EPA regulations at 40 CFR Part 51, sections 51.160 and 51.161 provide the general requirements that all air quality permits must address; sections 51.165(f)(5) and 51.166(w)(5) provide the requirements specific to PAL permitting; and section 51.166(q) provides further public notice provisions specific to PSD permitting. As discussed in this proposed action and in the accompanying TSD, EPA proposes that the public notice processes as submitted by the TCEQ satisfy the minimum requirements of 40 CFR 51.160, 51.161, and where applicable, 51.165 and 51.166. Additionally, we propose that TCEQ

provided an adequate demonstration to show that the Minor NSR public notice tiers and exemptions will assure the NAAQS are achieved and that the tiers and exemptions meet the *de minimis* principles set forth in *Alabama Power*. Our review and analysis demonstrates that the submitted regulations are at least as stringent as the minimum federal requirements and existing SIP requirements; and in some instances the Texas program provides notice beyond the minimum federal requirements. The act of providing notice on air quality permit applications consistent with the provisions submitted by the TCEQ on July 22, 1998; October 25, 1999; July 2, 2010; and March 11, 2011 will provide more visibility and detail of the air permitting process. The Texas Public Participation SIP submittals satisfy section 110(l) of the CAA.

## IV. Proposed Action

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

- 30 TAC Section 116.312 and the repeal of 30 TAC Section 116.124 as submitted on July 22, 1998.
- 30 TAC Sections 39.411(a); 39.418(b)(4); 55.152(b); 116.111(b); 116.114(a)(2), (a)(2)(A), (a)(2)(B), (b)(1), and (c)(1)–(3); 116.116(b)(4); and 116.312 as submitted on October 25, 1999.
- 30 TAC Sections 39.402(a)(1)–(3), (a)(6); 39.405(f)(3) and (g), (h)(1)(A), (h)(2)–(h)(4), (h)(6), (h)(8)–(h)(11), (i) and (j); 39.407; 39.409; 39.411(e)(1)–(4)(A)(i) and (iii), (4)(B), (5)(A) and (B), (6)–(10), (11)(A)(i), (iii) and (iv), (11)(B)–(F), (13) and (15), and (f)(1)–(8), (g) and (h); 39.418(a), (b)(2)(A), (b)(3) and (c); 39.419(e); 39.420(c)(1)(A)–(D)(i)(I) and (II), (D)(ii), (c)(2), (d)–(e); 39.601; 39.602; 39.603; 39.604; 39.605; 55.150; 55.152(a)(1), (2), (5) and (6); 55.154(a), (b), (c)(1)–(3) and (5), (d)–(g); 55.156(a), (b), (c)(1), (e) and (g); 116.114(a)(2)(B), (a)(2)(C), (c)(2) and (c)(3); and 116.194(a) and (b) as submitted on July 2, 2010.
- 30 TAC Section 116.194 as adopted January 11, 2006 and resubmitted on March 11, 2011.

Note that EPA is proposing to approve provisions at 30 TAC 39.411(f)(8)(A) and 39.605(1)(D) that will replace two provisions of the Texas SIP, found in the Texas PSD SIP Supplement. Upon finalization of this action, EPA will revise the table at 40 CFR 52.2270(e) to reflect these approvals.

Consistent with the analysis presented in today's proposed notice and the accompanying TSD, EPA is severing and taking no action on the following provisions submitted on July

2, 2010: 30 TAC Sections 39.402(a)(4), 39.402(a)(5), 39.402(a)(10), 39.402(a)(12), 39.405(h)(1)(B), 39.419(e)(3), 39.420(h). EPA is also severing and taking no action on the following provisions submitted on October 25, 1999: 30 TAC Sections 116.111(a)(2)(K), and 116.116(b)(3).

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

#### List of Subjects in 40 CFR Part 52

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

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

Dated: November 30, 2012.

**Ron Curry,**

*Regional Administrator, Region 6.*

[FR Doc. 2012-30098 Filed 12-12-12; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket ID FEMA-2011-0002; Internal Agency Docket No. FEMA-B-1100 and FEMA-B-1222]

#### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule; correction.

**SUMMARY:** On May 25, 2010 and October 6, 2011, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to those tables, to be used in lieu of the information previously published. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Iron County, Utah, and Incorporated Areas. Specifically, it addresses the following flooding sources: Coal Creek, Coal Creek Overflow, Coal Creek to Fiddlers Split, Cross Hollow, Greens Lake, North Airport Canal, Old Quichapa Creek Lower, Old Quichapa Creek Upper, Parowan Creek, Quichapa Channel, Quichapa West, Red Creek, Shurtz Creek, Shurtz Creek Shallow, Squaw Creek and Water Canyon.

**DATES:** Comments are to be submitted on or before March 13, 2013.

**ADDRESSES:** You may submit comments, identified by Docket No. FEMA-B-1100 and FEMA-B-1222, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4064 or (email) [luis.rodriguez3@dhs.gov](mailto:luis.rodriguez3@dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4064 or (email) [luis.rodriguez3@dhs.gov](mailto:luis.rodriguez3@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

#### Correction

In the proposed rule published at 75 FR 29238 and 76 FR 62006, in the May 25, 2010 and October 6, 2011, issues of the **Federal Register**, respectively, FEMA published a table under the authority of 44 CFR 67.4. The tables, entitled "Iron County, Utah, and Incorporated Areas" addressed the following flooding sources: Coal Creek, Coal Creek Overflow, Coal Creek to Fiddlers Split, Cross Hollow, Greens Lake, North Airport Canal, Old Quichapa Creek Lower, Old Quichapa Creek Upper, Parowan Creek, Quichapa Channel, Quichapa West, Red Creek,