(iii) GE T700 Turboshaft Engine Service Bulletin T700 S/B 72–0041, Revision 1, dated March 12, 2010.

(3) For GE service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT, telephone (800) 562–4409, email address *tsslibrary@sikorsky.com,* or at *http://www.sikorsky.com.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on December 24, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–31525 Filed 1–3–14; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0593; FRL–9905–07–Region–6]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution by Permits for New Construction or Modification; Permits for Specific Designated Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On November 21, 2013, the Environmental Protection Agency (EPA) published a direct final rule approving portions of two revisions to the Texas State Implementation Plan (SIP) concerning the Permits for Specific Designated Facilities Program, also referred to as the FutureGen Program. The direct final action was published without prior proposal because EPA anticipated no adverse comments. EPA stated in the direct final rule that if we received relevant, adverse comments by December 23, 2013, EPA would publish a timely withdrawal in the **Federal Register**. EPA received a letter dated December 19, 2013, from the Texas Commission on Environmental Quality stating that the March 9, 2006, and July 2, 2010, SIP revisions specific to the FutureGen program have been withdrawn from our consideration as revisions to the Texas SIP. Accordingly, EPA is withdrawing our direct final approval and in a separate rulemaking in today's **Federal Register** we are also withdrawing the corresponding proposed approval. We find that no further action is necessary on the Texas FutureGen Program March 9, 2006 and July 2, 2010 SIP revisions. The State's action also withdraws from EPA's review the FutureGen Program component of the January 22, 2010 Consent Decree between EPA and the BCCA Appeal Group, Texas Association of Business, and Texas Oil and Gas Association. This withdrawal is being taken under section 110 and parts C and D of the Federal Clean Air Act.

DATES: The direct final rule published on November 21, 2013 (78 FR 69773), is withdrawn effective January 6, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–2115. Ms. Wiley can also be reached via electronic mail at *wiley.adina@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 20, 2013.

Samuel Coleman,

Acting Regional Administrator, Region 6.

Accordingly, the amendments to 40 CFR 52.2270 published in the **Federal Register** on November 21, 2013 (78 FR 69773), which were to become effective on January 21, 2014, are withdrawn.

[FR Doc. 2013–31437 Filed 1–3–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2010–0612; FRL–9904–03–Region–6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Texas State Implementation Plan (SIP) that establish the public participation requirements for air quality permits. EPA finds 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 finalizing this action under section 110 and parts C and D of the Clean Air Act (the Act).

DATES: This final rule will be effective on February 5, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2010–0612. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253.

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.*

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

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I. Background for this Final Action

On December 13, 2012, EPA proposed approval of the July 22, 1998; October 25, 1999; July 2, 2010; and March 11, 2011, revisions to the Texas SIP that establish the public participation requirements for air quality permits. See 77 FR 74129. In this proposed action we explained that 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. There are additional detailed public participation requirements in 40 CFR 51.166(q) for the Prevention of Significant Deterioration (PSD) major permitting program.

Our December 13, 2012, proposed approval and the accompanying Technical Support Document provided the history of the Texas Public Participation provisions in the Texas SIP and a summary of each of the submitted revisions to the Texas SIP. The proposal identifies the specific sections that were proposed for approval from the July 22, 1998; October 25, 1999; July 2, 2010; and March 11, 2011 SIP submittals. Note that while we are acting on revisions to the Texas SIP that were submitted in four separate packages, we collectively refer to these rules as the Texas Public Participation SIP submittal from July 2, 2010 since the majority of the revisions were submitted on that date.

II. Response to Comments

EPA accepted comments on our proposed approval of the Texas public participation SIP revisions for 60 days, through February 11, 2013. We received comments from 7 organizations—the Texas Commission on Environmental Quality (TCEQ), the Gulf Coast Lignite Coalition (GCLC), the Association of Electric Companies of Texas (AECT), the Texas Industry Project (TIP), the BCCA Appeal Group (BCCAAG), Luminant, and the University of Texas Law Clinic on behalf of Air Alliance Houston, Citizens for Environmental Justice, Texas Environmental Justice Advocacy Services, Public Citizen and Environmental Integrity Project. All comment letters can be found in their entirety in the docket for this rulemaking. The following section summarizes the comments received and provides responses to each. Note that comments are grouped together into categories to assist the reader.

General Comments in Support of the Proposed Approval

Comment 1: AECT stated that EPA's December 13, 2012, proposed approval of the Texas Public Participation Rules as revisions to the Texas SIP were adequately supported. As a result, the AECT requested that EPA issue final approval of the Texas Public Participation submittals as revisions to the Texas SIP.

Response 1: EPA appreciates the support for our proposed approval. No changes were made to the final rule as a result of this comment.

Comment 2: GCLC and Luminant support EPA's December 13, 2012, proposed approval of the Texas Public Participation rules as revisions to the Texas SIP. The GCLC states that the submitted public participation requirements are fully protective of Texans' ability to thoroughly and adequately comment on air permit applications in the state and meet and exceed federal public participation requirements. Luminant states that the TCEQ has a robust regulatory program to ensure the protection of human health and the environment in Texas, including opportunity for public participation regarding issues before the Commission.

Response 2: EPA appreciates the support for our proposed approval. Our December 13, 2012, proposal and the accompanying Technical Support Document identified the manner in which the submitted rules satisfy all necessary requirements for public participation under the CAA and EPA's regulations. No changes were made to the final rule as a result of these comments.

Comment 3: GCLC believes that existing public participation requirements and previous SIP submittals were more than adequate to comply with the CAA, particularly with regard to Texas' contested-case hearing process which is far more than required by federal law.

Response 3: EPA appreciates GCLC taking the opportunity to comment on our December 13, 2012, proposed approval of the Texas Public Participation rules. However, we disagree with the commenter's statement that the previous public participation requirements were adequate under federal law. EPA believes the previous public participation requirements were inadequate to implement the requirements of the CAA and EPA's regulations, thus we proposed limited approval/limited disapproval on November 26, 2008. See 73 FR 72003. EPA withdrew our proposed limited approval/limited disapproval on November 5, 2010, only after the TCEQ had adopted and submitted revised public participation rules that replaced the previous SIP submissions and addressed our concerns identified in the proposed limited approval/limited disapproval. See 75 FR 68291. TCEQ's own comment letter acknowledges that the ''new and amended rules submitted to EPA in July 2010 were adopted in response to EPA's notice proposing limited approval and limited disapproval of TCEQ's outstanding SIP revisions regarding public participation.'' See February 11, 2013 letter from TCEQ to EPA in the docket for this rulemaking.

Regardless, our December 13, 2012, proposed action evaluated the revised public participation rules submitted as revisions to the Texas SIP on July 2, 2010, by the TCEQ and found the submitted rules to be adequate under federal law as described in our proposal and accompanying TSD. We note that contested case hearings were not submitted for EPA's review and therefore the contested case hearing process is outside the scope of this final rule action.

Comment 4: The BCCAAG and TIP supports EPA's December 13, 2012, proposed approvals of each applicable Texas regulation in EPA's proposed notice at 77 FR 74129. The BCCAAG and TIP state that these regulations comply with the FCAA and are an important part of the Texas air quality permitting program.

Response 4: EPA appreciates the support for our proposed approval. No changes were made to the final rule as a result of this comment.

Comment 5: The TCEQ commented that the new and amended rules submitted to EPA in July 2010 were adopted in response to EPA's proposed limited approval and limited disapproval. The TCEQ recognizes that EPA has reviewed and proposed approval of most of the rules submitted in 2010, as well as in earlier submittals, stating that all outstanding issues were adequately addressed.

Response 5: EPA appreciates the support of the TCEQ for our proposed rulemaking. We note that the TCEQ's cooperation and willingness to collaborate with the Region 6 office has enabled us to propose full approval of the revised public participation rules, as submitted July 2, 2010. No changes were made to the final rule as a result of this comment.

Comment 6: The TCEQ supports EPA's determination that TCEQ meets, and in some cases exceeds, the minimum federal requirements and therefore has proposed full approval of public participation rules submitted in 1998, 1999, 2010 and 2011. The TCEQ noted that the EPA correctly observes that the Notice of Receipt of Application and Intent to Obtain Permit (NORI) is a unique element to the Texas permit program that is not federally required. TCEQ also commented that it is important to acknowledge that TCEQ's comment period exceeds federal requirements. Comments are considered timely if filed any time after the NORI is published and through the end of the comment period. This timeline encompasses the administrative completeness determination, the NORI publication period, the technical review period, as well as the comment period associated with the Notice of Application and Preliminary Decision (NAPD), which may be more than 30 days if alternate language publication is required and that publication is after the English language publication. Therefore, the state comment period greatly exceeds the federal requirement in length of time, thus affording greater opportunity for public participation.

Response 6: EPA appreciates the support for our proposed approval. As detailed in our proposal and accompanying TSD, EPA finds that the public participation provisions as submitted in four separate revisions to the SIP satisfy the minimum federal requirements for public participation consistent with the CAA and EPA regulations. We agree with the TCEQ that our analysis has identified some provisions of the Texas public participation process that go beyond the minimum requirements—such as the requirement to publish notice of the application (first notice, or NORI) or to require sign-posting. No changes were made to the final rule as a result of this comment.

Comment 7: The TCEQ notes that EPA correctly observes that the comment period runs for 30 days after last publication of the NAPD, and, by proposing approval of these rules, acknowledges that the TCEQ's comment period for minor and major NSR permit applications that are subject to the requirements of Chapters 39, 55, and 116 meets the minimum federal requirements for a 30 day period after the draft permit is made available for review.

Response 7: EPA appreciates the support for our proposed approval. We agree with the TCEQ that the comment requirement for the comment period to run 30 days after last publication of the NAPD meets the minimum federal requirements for a 30-day comment period after the draft permit is available for review. No changes were made to the final rule as a result of this comment.

Comment 8: UT Law Clinic commented that the proposed rules do correct some clear legal shortcomings in Texas' public participation requirements for the Major permitting programs, the Nonattainment New Source Review (NNSR) and Prevention of Significant Deterioration (PSD) applications.

Response 8: EPA appreciates the support. No revisions were made to the final rule as a result of this comment.

Comments Regarding Severability

Comment 9: EPA received several comments on our approach of taking no action for the public participation provisions at 30 TAC 116.111(a)(2)(K) and 30 TAC 116.116(b)(3), relating to HAPs permitting under CAA 112(g) and 40 CFR Part 63. The BCCAAG and TIP concur with EPA's analysis that 30 TAC 116.116(b)(3) should not be part of the Texas SIP. The TCEQ understands that EPA is taking no action on the October 25, 1999 submittal of 30 TAC 116.111(a)(2)(K) and 116.116(b)(3). The TCEQ further notes that EPA returned 30 TAC 116.111(a)(2)(K) and 116.116(b)(3) by letter on June 29, 2011.

Response 9: EPA agrees with TCEQ's assessment of the scope of this approval action. No changes were made to the final rule as a result of this comment.

Comment 10: EPA received several comments on our decision to take no action on the public participation provisions for new flexible permits and flexible permit amendments at 30 TAC 39.402(a)(4) and (a)(5). The TCEQ recognizes that the EPA is taking no action on the public participation rules for new flexible permits and flexible permit amendment applications (adopted June 2, 2010). The BCCAAG and TIP request that EPA approve 30 TAC 39.402(a)(4) and (5) rather than take no action, as proposed. The BCCAAG and TIP identified the following reasons EPA should act on the public participation provisions for Flexible Permits:

1. EPA has a statutory obligation to act on these SIP submittals for public participation for flexible permits.
2. EPA's prior disapproval of the Flexible Permit program does not provide a basis to delay action on the submitted sections.
3. Analysis of the 402(a)(4) and (a)(5) provisions does not reveal any concerns since the provisions require Flexible Permit holders to follow procedures that EPA is otherwise proposing to approve.

Response 10: EPA agrees that we have a statutory obligation to act on the SIP submittal for public participation for flexible permits; however we have chosen to sever the flexible permit public participation provisions per our SIP approval authority and discretion under the CAA and address those public participation provisions in the future with the flexible permit program as a whole in a separate SIP action. This approach will prevent any misunderstanding among the regulated community that would arise if a public participation pathway was approved for a permitting program that is not currently approved into the Texas SIP. Additionally, EPA has not finished its review of the flexible permitting program and how its public participation process is intertwined. Further, there is nothing in the Act that prohibits the bifurcation of our action. Finally, this approach was anticipated and supported by the TCEQ as explained in the final Texas Register. See 35 TexReg 5223, June 18, 2010. No revisions were made to this final rule as a result of this comment.

Comment 11: EPA received several comments on our decision to take no action on the public participation provisions for portable facilities at 30 TAC 39.402(a)(12). The TCEQ recognizes that EPA is taking no action on the public participation rules for portable facilities (adopted February 10, 2010) because these provisions are associated with rules for permitting programs which have not yet been reviewed by EPA. The BCCAAG and TIP request that EPA approve 30 TAC 39.402(a)(12) and 30 TAC 116.20 and 30 TAC 116.178 as submitted March 19, 2010. The BCCAAG and TIP note that EPA has a statutory obligation to act on the portable facility rules and public participation requirements.

Response 11: EPA has a statutory obligation to act on the SIP submittal for public participation for portable facilities; however we have chosen to sever the portable facility public participation provisions per our SIP approval authority and discretion under the CAA. As explained in our December 13, 2012, proposal, EPA has not evaluated the public participation provisions for portable facilities at 30 TAC 39.402(a)(12) for inclusion in the Texas SIP because we have not yet acted on the underlying definitions and permitting rules for portable facilities at 30 TAC 116.20 and 116.178, respectively. EPA will address the definitions and permitting provisions for the Relocations and Changes of

Location of Portable Facilities at a separate time and in a separate action. We will address the public participation requirements for portable facilities at that time. This approach will prevent any misunderstanding among the regulated community that would arise if a public participation pathway was approved for a permitting program that is not currently approved into the Texas SIP. Additionally, EPA has not finished its review of the portable facility rules and how the public participation process for portable facilities is intertwined. Further, there is nothing in the Act that prohibits the bifurcation of our action. No revisions were made to this final rule as a result of this comment.

Comment 12: TCEQ recognizes that EPA is taking no action on the public participation rules for FutureGen (adopted February 22, 2006), which is associated with rulemakings for permitting programs which have not yet been reviewed by EPA.

Response 12: EPA has a statutory obligation to act on the SIP submittal for public participation for FutureGen applications; however we have chosen to sever the FutureGen public participation provisions per our SIP approval authority and discretion under the CAA. As explained in our December 13, 2012, proposal, EPA had not evaluated the public participation provisions for applications for permits, registrations, licenses, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project at 30 TAC 39.402(a)(10) for inclusion in the Texas SIP because we had not yet acted on the underlying definitions and permitting rules for the FutureGen project at 30 TAC Chapter 91. Since the time of our proposal on public participation, EPA has separately completed our review of the FutureGen program, including the public participation requirements. EPA signed a direct final approval of the FutureGen program rules on November 1, 2013. Information regarding this separate rulemaking can be found in the FutureGen docket, EPA–R06–OAR–2006–0593. No revisions were made to this final rule as a result of this comment.

Comment 13: TCEQ agrees with EPA's decision to take no action on 30 TAC 39.405(h)(1)(B). EPA inadvertently included this provision in the proposed SIP analysis because TCEQ did not include this rule as part of its submittal.

Response 13: EPA appreciates the comment. We agree with the TCEQ that we erred in our proposal when we identified 30 TAC 39.405(h)(1)(B) as submitted as a SIP revision on July 2, 2010. Today's final action corrects this error.

Comment 14: UT Law Clinic commented that to the extent EPA finds other provisions of the Texas submittal separable, EPA should require Texas to commit to correcting the additional deficiencies identified in order to obtain a conditional approval of those provisions.

Response 14: Our proposed rulemaking identified the reasons for severing and taking no action on the portions of the submittal relevant to public participation for Flexible Permits, FutureGen permitting, and Portable Facilities. EPA has not yet evaluated these programs; therefore, there are no identified deficiencies in the programs to be corrected. However, in this action, we are finalizing our proposed approval of the Texas public participation program. As explained in this response to comments, for those portions of the July 2, 2010, SIP submittal for public participation we are taking action on, we do not find any deficiencies in Texas's public participation program as it is currently submitted to EPA for review. So, further severing of provisions from this action in order to resolve deficiencies is unnecessary. No revisions have been made to the final rule as a result of this comment.

Comments Regarding Environmental Justice

Comment 15: UT Law clinic commented that EPA has a mandate to provide members of Environmental Justice communities with the ''opportunity to participate in decisions about activities that may affect their environment and/or health''.

Response 15: EPA aims to provide meaningful involvement in the decision-making process to all people, regardless of race, color, national origin, or income. Our December 13, 2012, proposal and today's final action have been closely analyzed to ensure federal requirements have been satisfied for public participation under the CAA and EPA's regulations. For more discussion on how our proposal and final action on the Texas public participation rules meet or satisfy minimum federal requirements please see comment and response 22. EPA believes it is important to recognize and work with Environmental Justice communities to assure their full participation in permitting activities; however, we note that there are no specific statutes or regulations giving EPA authority to require a state's SIP to address public participation opportunities for Environmental Justice communities. Rather, EPA is subject to Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. (59 FR 7629, February 16, 1994). Through our compliance with EO 12898 we work to identify minority communities and low-income communities that may be disproportionately impacted by a specific rulemaking. EPA endeavors in every rulemaking to ensure each member of the public has an equal opportunity for public participation. The public participation provisions are designed to apply consistently statewide and provide every member of the public the opportunity to review and submit comments on a proposed permit application. These public participation provisions meet the federal requirements for public participation. The TCEQ also requires additional notice and opportunity through the NORI publication. Further, the sign postings and alternate language publication provisions of the Texas rules are specifically targeted to ensuring environmental justice communities receive fair notice and opportunity to comment. No changes were made to our final rule as a result of this comment.

Comment 16: UT Law Clinic also commented that the approval of the proposed public participation rules would exacerbate public participation inadequacies that Texas communities have complained about for years.

Response 16: The commenter did not provide specific examples of the ''public participation inadequacies that Texas communities have complained about for years''; however, the comment letter discusses a variety of specific issues throughout and had attached several petitions that environmental groups have previously submitted to EPA under the Administrative Procedures Act.[1] These petitions discuss various issues regarding Texas's air permitting program, including some of the specific issues that are also noted in the comment letter. Where the UT Law Clinic submitted specific issues, we have addressed those comments below with respect to our proposed approval of the July 2, 2010 public participation submittal. We note that, insofar as where Texas's public participation program as submitted meets the public participation requirements in Title I of the CAA and the applicable federal

[1] ''Petition for EPA Action Addressing Texas' Air Permitting Program Deficiencies, Environmental Integrity Project (August 28, 2008); and First Supplement to Petition for EPA Action Addressing Texas' Air Permitting Program Deficiencies, Environmental Integrity Project (January 5, 2009).''

requirements, EPA must approve the submittals. EPA's proposed limited approval limited disapproval noted several deficiencies in Texas's prior public participation program. For reasons explained throughout this document, we find that the State's revised July 2, 2010 submittal cures these deficiencies. No changes were made to our final rule as a result of this comment.

Comments Regarding the Requirements of the Existing SIP-Approved Public Participation Rules

Comment 17: UT Law Clinic commented that the EPA misrepresented the public participation requirements of the current Texas SIP. UT Law Clinic commented that EPA's proposed approval states that the current SIP only requires public notice of amendments at the discretion of the TCEQ Executive Director. But, contrary to EPA's assertions, the UT Law Clinic comments that the current Texas SIP requires public participation for all permit applications, including applications for any modifications.

Response 17: EPA disagrees with the commenter's interpretation of the current public participation requirements in the existing Texas SIP. The current SIP-approved requirements for public participation are found at 30 TAC 116.130–116.137. The applicability of these requirements is found at 30 TAC 116.130(a) as follows: ''Any person who applies for a new permit or permit renewal shall be required to publish notice of the intent to construct a new facility or modify an existing facility or renew a permit. The notice shall be published in a newspaper in general circulation in the municipality where the facility is located or to be located. Any person who applies for a *permit amendment* shall provide public notification as required by the executive director'' (emphasis added).[2]

The applicability statement at 30 TAC 116.130(a) creates three categories of permit actions: (1) New permits, (2) permit renewals and (3) permit amendments. This subdivision of the types of permit actions is consistent with an analysis of the Texas SIP permitting provisions at 30 TAC Chapter 116, Subchapter B, Sections 116.110 and 116.111. The Applicability of the Permit Application Requirements at 30 TAC 116.110(a) requires a construction permit for any new facility or modification of any existing facility. This construction permit will be issued under the General Application provisions at 30 TAC 116.111. Note that if the construction permit is for a new major stationary source or a major modification, then the General Applicability provisions at 30 TAC 116.111 direct the applicant to the SIP-approved permitting provisions for PSD and NNSR. If the construction permit is for a minor NSR permit or a minor permit modification, the permit will be issued pursuant to the case-by-case minor permit provisions of 30 TAC 116.116 or will satisfy the conditions of a Standard Permit or a Permit by Rule. The General Applicability provisions at 30 TAC 116.110(b) further state that minor modifications to existing permitted facilities may be handled through the amendment of an existing permit. Thus the SIP-approved Texas permit program designates a permit amendment as one type of permitting action that can be used to authorize a modification to an existing facility. Other types of permitting actions that could be used for modifications at existing facilities would include standard permits, permits by rule, and permit alterations.

EPA believes that the commenter misinterpreted the Texas permitting program such that a minor permit modification is a specific type of permit application that would have its own public notice requirements. As presented previously, minor modification of an existing source is accomplished through a permit amendment, standard permit, permit by rule, or permit alteration. Because the SIP approved permitting program recognizes new permits, permit renewal and permit amendments, EPA's proposed approval is correct in its characterization of the SIP-approved public notice requirements for minor permit amendments. Pursuant to the SIP-approved language at 30 TAC 116.130(a), minor permit amendments only go through public notice to the extent required by the TCEQ Executive Director. The July 2, 2010 public notice SIP submittal improves upon the public notice requirements for minor permit amendments. The new rules retain and refine the TCEQ's Executive Director's discretion provisions to apply to only two specific types of minor permit amendments—only those minor permit amendments that are below the ''de minimis'' and ''insignificant'' thresholds. No changes were made to the final rule as a result of this comment.

Comment 18: UT Law Clinic commented that under the revised rules, public participation would be required only for modifications that meet the definition of ''amendment'' and that meet one of the criteria in 30 TAC 39.402(a)(3)(B) or (a)(3)(C). This narrowing of the universe of modifications subject to public participation weakens the existing SIP-approved public participation requirements.

Response 18: As discussed in Comment/Response 17, the commenter has misunderstood the current SIP-approved public notice and permitting provisions in the Texas Program for minor modifications. A minor modification of an existing facility is not a specific permit action that goes through public notice. Rather, when a facility will be modified (pursuant to the SIP-approved definition of modification at 30 TAC 116.10) and the modification is below the major NSR thresholds, the source owner or operator must apply for a permit amendment or permit alteration or for other applicable permit actions such as a standard permit or permit by rule to address the minor modification.

Under the current SIP, any minor modification that is permitted as a permit amendment will only go to public notice at the discretion of the Executive Director. In contrast, the revised public participation rules submitted July 2, 2010, require minor NSR permit amendments to go through public notice if the emission rates exceed the ''de minimis'' and ''insignificant'' thresholds. Further, the Executive Director has the discretion to require notice for any minor permit amendments that fall below the ''de minimis'' and ''insignificant'' thresholds if the Executive Director determines these permit amendments to have a reasonable likelihood for significant public interest in a proposed activity, emissions to impact a nearby sensitive receptor, a high nuisance potential from the operation of the facilities, or the application involves a facility in the lowest classification under Texas Water Code, § 5.753 and § 5.754 and 30 TAC Chapter 60. In contrast to the SIP-approved Executive Director discretion for minor permit amendments, which essentially provides the Executive Director with the authority to exempt all minor permit amendments from public notice, the revised rules submitted July

[2] Public notice for permit amendments at the discretion of the TCEQ Executive Director is only applicable to minor permit amendments. 30 TAC 116.131(a) requires that ''for any permit subject to the FCAA, Title I, Part C or D, or to Title 40 Code of Federal Regulations (CFR), Part 51.165(b), the executive director shall state a preliminary determination to issue or deny the permit and require the applicant to conduct public notice of the proposed construction.'' Therefore, a permit application for a new major source or major modification subject to PSD/NNSR permitting requirements is required to go through public notice.

2, 2010, that are being approved today only provide for the Executive Director to exercise discretion in requiring additional notice if the criteria presented above are satisfied. Therefore, the revised rules expand the public notice requirements to cover the majority of minor permit amendment applications. EPA views this expansion of public notice requirements for minor modifications to be an improvement of the SIP instead of the weakening purported by the commenter. No changes were made to the final rule as a result of this comment.

Comment 19: UT Law Clinic commented that, although the current SIP does include provisions regarding alterations, it does not exempt modifications authorized by alterations from public participation requirements, including notice and the opportunity for public comment. The commenter also submitted several examples of alterations being used in permits.

Response 19: Minor modifications to an existing facility are not a specific type of permit action under the SIP-approved Texas permit program. Rather, when a facility chooses to make a minor modification at an existing major or minor facility, the source owner or operator will choose to get authorizations for that minor modification through a permit amendment, permit alteration, standard permit or permit by rule. Therefore, the commenter is incorrect when stating that the current SIP requires public participation for minor modifications authorized by alterations. The existing SIP requirements for permit alterations, which are outside the scope of today's rulemaking, exempt permit alterations from public notice as explained at 67 FR 58697, September 18, 2002.

Comments Regarding the Proposed Rules Weaken the Existing SIP-Approved Public Participation Requirements

Comment 20: UT Law Clinic commented that EPA proposes to approve rules that weaken existing public participation requirements and that create new loopholes that eliminate all public participation for many minor new source review applications, including those at major sources in nonattainment areas.

Response 20: EPA disagrees with the commenter. As our proposal explained, the revised public participation rules submitted on July 2, 2010, either improve upon the existing SIP-approved public participation requirements or maintain the status quo for all types of permit applications subject to the Chapter 39 public participation requirements.

- For permit applications for major new sources and major modifications subject to PSD or NNSR permit requirements the revised rules represent no substantive change in the existing SIP-approved requirements. Permit applications for new major sources or major modifications subject to PSD and NNSR permit requirements must go through NORI and NAPD notice.
- Public notice requirements for PAL permit applications are not explicitly provided for in the current SIP-approved public notice requirements. However, as discussed in the proposal and TSD, the public notice requirements for PAL permit applications are consistent with federal requirements and require NAPD notice.
- Public notice requirements for renewal permit applications are consistent with the current SIP-approved requirements. As noted in the proposal, there is no federal requirement for a Title I permit renewal, therefore EPA views any renewal permit and the subsequent public notice to enhance Texas's SIP-approved permit renewals program.
- TCEQ's revised regulations for public participation increase opportunities for public involvement in Minor NSR permitting decisions compared to the current SIP-approved requirements. For permit applications for new minor sources the revised July 2, 2010, public notice rules maintain the status quo and require NORI and NAPD notice. However, as explained in Comment/Response 17 the current SIP-approved public notice requirements for minor permit amendment applications is at the discretion of the Executive Director. This means that under the current SIP, many minor permit amendment applications may receive no notice at all. In response to our proposed limited approval/limited disapproval, the July 2, 2010, public participation SIP submittal expanded the publication of the NAPD to cover Minor NSR permit applications and specified Minor NSR permit amendment applications. The new rules also require permit amendment applications to go through NORI and NAPD if the amendment is for a change in the character of emissions or the release of an air contaminant not previously authorized. Further, the revised rules require NORI and NAPD public notice for all new minor sources and all permit amendments above identified ''de minimis'' and ''insignificant'' thresholds. For permit amendment applications with emissions less than these thresholds, the TCEQ justified its approach using *de minimis* principles like those established in *Ala. Power Co.* v. *Costle,* 636 F.2d 323, at 360–361 (D.C. Cir. 1979) [hereinafter *Alabama Power*]. See the June 18, 2010 Texas Register, pages 5224–5230. 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.

EPA's proposal and our analysis of the July 2, 2010, public notice submittal did not identify any public notice loop holes that violate the relevant requirements in the CAA or federal regulations. Rather, we have identified an expansion of public notice requirements for minor permit amendments above certain thresholds. For the minor permit amendment applications below the thresholds, there is either no public notice (which maintains the status quo of the current SIP requirements) or the Executive Director can exercise the provided discretion to require public notice if there is reasonable likelihood for significant public interest in a proposed activity, there is reasonable likelihood for emissions to impact a nearby sensitive receptor, there is reasonable likelihood for a high nuisance potential from the operation of the facilities, or the application involves a facility in the lowest classification under Texas Water Code, § 5.753 and § 5.754 and 30 TAC Chapter 60. No changes were made to the final rule as a result of this comment.

Comment 21: UT Law Clinic commented that the Texas rules at 30 TAC 39.402 create new exemptions from public participation requirements. Specifically, the Texas rules at 30 TAC 39.402 limit public participation to only certain types of modifications, those that are defined as ''amendments'' and that meet the one or more of the conditions in 30 TAC sections 39.402(a)(3)(A), (B), (C), or (D), or 30 TAC 39.402(a)(6). Unlike the existing SIP rules, the rules proposed for approval exempt large classes of modifications from all public participation. Their approval would, therefore, weaken the existing SIP.

Response 21: EPA disagrees with the commenter that the existing SIP requires public participation for all minor modifications. The existing SIP only requires public participation for new minor permit applications or renewal applications. Applications for minor permit amendments are only required to go through notice to the extent determined by the Executive Director. Therefore, the commenter is inaccurate

in the assertion that the existing SIP requires public participation for all minor modifications.

EPA also disagrees that the new rules submitted July 2, 2010, at 30 TAC 39.402 create new exemptions from public participation requirements and limit public participation to only certain types of minor modifications. The revised public participation rules maintain the existing stringency of the SIP requirements for major NSR and new minor stationary sources and provide more opportunities for public participation for minor modifications to existing facilities. In the following paragraphs we will address each portion of the applicability provisions of the July 2, 2010 rules as requested by the commenter.

- The public notice requirements at 30 TAC 39.402(a)(3)(A) do not limit public notice. Section 39.402(a)(3)(A) requires public notice for any minor permit amendment application where there is a change in character of emissions or release of an air contaminant not previously authorized under the permit, regardless of whether the emissions are below the ''de minimis'' and ''insignificant'' thresholds. The current SIP only requires minor permit amendments to go to notice at the discretion of the Executive Director, so even if a minor permit amendment was for an air contaminant not previously emitted there was no requirement for public notice unless the increase in emissions triggered NNSR or PSD.
- With respect to the requirements at 30 TAC 39.402(a)(3)(B) and 39.402(a)(3)(C) as submitted on July 2, 2010, for minor modifications public notice is expanded to cover minor permit amendments that exceed the specified ''de minimis'' and ''insignificant'' thresholds. While 30 TAC Sections 39.402(a)(3)(B) and 39.402(a)(3)(C) do establish two thresholds below which public participation is not required, the establishment of these two thresholds actually represent an expansion over the existing SIP-approved public notice requirements for minor permit amendments. Under the current SIP, minor permit amendment applications regardless of permitted emission rate do not go to notice unless required by the Executive Director. EPA maintains that the establishment of the ''de minimis'' and ''insignificant'' thresholds provide opportunities for more minor permit amendments to go through public notice compared to the existing SIP requirements. As explained in previous Comment/Response 20, these two categories of thresholds are narrower than the existing SIP requirements and cannot be considered a weakening. With the addition of these two thresholds, the TCEQ is now requiring public notice for all minor permit amendment applications above either of the thresholds, which is a significant expansion of the minor NSR SIP requirements for public participation. The TCEQ submitted an explanation of how the thresholds were established that demonstrated the thresholds do not impact air quality in Texas. Further, EPA finds that Texas's ''de minimis'' and ''insignificant'' thresholds do not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA, as required by section 110(l).
- The requirements at 30 TAC 39.402(a)(3)(D) establish the criteria that the TCEQ Executive Director will use to require public notice for minor permit amendment applications that would not otherwise go through the public notice process because the minor permit amendments are below either of the two thresholds. This use of Executive Director Discretion is in direct contrast to the discretion currently provided for in the Texas SIP. In the SIP-approved public notice rules the Executive Director has the discretion to exempt every minor permit amendment application from public notice. The rules submitted on July 2, 2010, at 30 TAC 39.402(a)(3)(D) do not allow for the Executive Director to remove a requirement, rather these rules provide a set of criteria for the Executive Director to require additional public notice not already required by the rules. This type of director discretion does not limit public notice and does not violate the relevant requirements in the CAA and federal regulations. Further, EPA views the criteria under which the Executive Director can require additional notice for minor permit amendments as creating a consistent mechanism that will improve implementation of the Texas minor NSR permit program.
- The requirements at 30 TAC 39.402(a)(6) require public notice for permit renewals. There is no federal requirement for a title I permit renewal, so any requirement for public notice of such a renewal enhances the Texas air permitting program and provides opportunity for public notice beyond federal requirements.

For the reasons stated above, EPA disagrees that the revised public participation rules submitted July 2, 2010 create new exemptions from public notice requirements. No changes have been made to the final rule as a result of this comment.

Comments Regarding the Minor NSR Public Notice Requirements Specific to Two Types of Minor NSR Permit Amendment Applications

Comment 22: UT Law Clinic commented that ''public participation is necessary to maintain air quality under the CAA.'' See 77 FR 74129, 74130 (Dec. 13, 2012); 60 FR 45530, 45548 (citing 38 FR 15834, 15836 (1973) and *NRDC* v. *EPA,* No. 72–1522 (D.C. Cir.) See also 61 FR 38250, 38276 and 38320.

Response 22: We agree with the commenter. In fact, TCEQ's revised regulations for public participation that we are approving today increase opportunities for public involvement in Minor NSR permitting decisions. TCEQ's revised rules 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 and limit conditions for use of the Executive Director's discretion. All permit amendment applications now are subject to public notice if changes to the permits authorize a change in the character of emissions or a release of an air contaminant not previously authorized. Permit amendment applications that increase emissions above either of the two thresholds now are subject to public notice. 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 permit amendments go through full public notice with the NORI and NAPD. But, the new rules retain and refine the TCEQ's director's discretion provisions for minor permit amendments below the ''de minimis'' and ''insignificant'' thresholds. 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.*

As we explain in Comments/Responses 39–40, Texas tailored the scope of its Minor NSR permit program. Specifically, Texas 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. TCEQ has made an adequate

justification that the Texas tiered public participation program satisfies the provisions of 40 CFR 51.160(e) and 51.161. No changes were made to the final rule as a result of this comment.

Comment 23: UT Law Clinic commented that even if *Alabama Power* could be read to give agencies the authority to create *de minimis* exceptions to their regulations, the exceptions created by the Texas rules do not qualify as *de minimis.* The actual modifications that Texas has entirely exempted from public participation are not *de minimis* or environmentally insignificant.

Response 23: EPA disagrees with the commenter. EPA recognizes a state's ability to tailor the scope of its Minor NSR program as necessary to achieve and maintain the NAAQS in accordance with CAA 110(a)(2)(C). EPA has reviewed the TCEQ's analysis and determined that the state established ''de minimis'' and ''insignificant'' thresholds meet federal requirements. EPA's evaluation of the adequacy of the State's demonstration is in our proposal at 77 FR 74129, at 74136–74140 and Comments/Responses 39–40 =. The commenter did not provide any specific evidence that disputes the demonstration provided by Texas, nor did the commenter provide any alternative metrics the EPA should consider when evaluating the scope of the applicability of the ''de minimis'' or ''insignificant'' thresholds submitted by TCEQ. The minor permit amendments are still processed pursuant to the SIP-approved Minor NSR permitting program and will only be issued by the TCEQ if demonstrated to be protective of the NAAQS and increment. We note that the ''de minimis'' and ''insignificant'' thresholds are only used to distinguish those minor permit amendment applications that require full review, including public notice, from those that may not. See 77 FR 74138–74139. 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. No revisions were made as a result of this comment.

Comment 24: The EPA has repeatedly refused to fully approve programs that provide a ''blanket exemption'' from one or more public notice requirements of Part 51. The commenter referenced EPA actions at 73 FR 20536, at 20545–46 on April 16, 2008, and at 73 FR 72001, at 72008 on November 26, 2008.

Response 24: The commenter has not shown that the state established ''de minimis'' and ''insignificant'' thresholds under the Texas program are not approvable. The commenter cites two **Federal Register** notices regarding ''blanket exemptions'' from public notice requirements, but does not explain how the disapproved exemptions worked or compare the disapproved exemptions to the Texas ''de minimis'' or ''insignificant'' thresholds. In sum, the commenter did not demonstrate that any previous EPA action provides a basis for disapproving the submitted revisions to the Texas public participation requirements.

Despite the commenter's failure to describe or explain the relevance of the **Federal Register** citations, EPA has reviewed the April 16, 2008, final partial approval and partial disapproval action for Nevada referenced by the commenter, and confirmed that it provides no basis for disapproving the Texas program because Nevada's SIP submittal is distinguished from the Texas public participation rules at issue here. In the April 16, 2008 final rule, EPA disapproved Nevada's blanket exemption from public notice for sources below 100 tons per year (tpy) because the State had not provided any demonstration to justify its limitation on the scope of its Minor NSR permitting requirements. Thus, EPA suggested that the State consider ''lowering the mandatory public notice thresholds from 100 tons per year.'' 73 FR 20536, at 20546. Contrary to the situation in Nevada, the TCEQ has submitted a demonstration for both the ''de minimis'' and ''insignificant'' thresholds. For the small subset of minor permit amendment applications that are below the ''de minimis'' and ''insignificant'' thresholds and are not subject to full review, as discussed more fully in Comment/Response 39–40, the TCEQ has demonstrated this tailoring of the Minor NSR program is consistent with the CAA and EPA's regulations. Additionally, the Texas rules provide for public notice below these thresholds at the discretion of the TCEQ Executive Director—which is one of the suggested remedies provided by EPA for Nevada to consider in a subsequent rule change. *See id.*

EPA also reviewed the other **Federal Register** notice cited by the commenter, the November 26, 2008, proposed limited approval and limited disapproval in Texas. The section of that proposal referenced by the commenter generally highlights the need for public participation programs to comply with 40 CFR Part 51, and describes previous EPA rulemakings concerning such programs. The cited proposed rule notes that EPA ''approved Oregon's Minor NSR program establishing categories of Minor NSR permit actions,'' with differing levels of public review. See 73 FR 72008. The cited proposed rule also indicates that EPA ''disapproved or gave partial approval to Minor NSR public participation requirements'' that did not allow a 30-day comment period. See 73 FR 72008. The commenter does not specifically discuss the proposed approval of the Texas public notice provisions or any of the specific program approval decisions mentioned in that notice. And the commenter has not shown how or why any of the cited EPA actions provide any basis for questioning EPA's approval of the Texas ''de minimis'' and ''insignificant'' thresholds.

EPA finds that the commenter failed to demonstrate relevancy of the cited EPA actions (73 FR 20536, at 20545–46 on April 16, 2008, and at 73 FR 72001, at 72008 on November 26, 2008) to our proposed approval of the Texas public participation program. However to be clear and transparent in our rulemaking, we have reviewed the above cited actions, and the additional actions internally referenced within the April 16, 2008 and November 26, 2008 actions, and present the following discussion of each referenced rulemaking and how that rulemaking is either relevant or not relevant to the Texas rule at hand.

• 68 FR 2891, January 22, 2003—EPA's direct final approval of the Oregon Minor NSR program. In that final rule, EPA approved Oregon's tailoring of public participation requirements, in which the State created four categories of permit actions and established public participation criteria for each category. Similar to EPA's evaluation of the Oregon public participation rules, our analysis of the Texas public participation rules has demonstrated that Texas has tailored its public participation process in a manner that is consistent with the requirements for public participation set forth in 40 CFR 51.161 for minor source permits. EPA finds that our basis for this referenced rule is relevant to support our final rulemaking. Furthermore, Texas has demonstrated that using the ''de minimis'' and ''insignificant'' thresholds will have no adverse impact upon the existing air quality in the State of Texas.

• 65 FR 2042, January 13, 2000—EPA's final partial approval and partial disapproval of the West Virginia Minor NSR program. In that final action EPA disapproved a 15-day public comment

period for some Minor NSR actions because the State did not submit a demonstration. This disapproval is not applicable to the Texas public participation rules. As discussed in our December 13, 2012 proposal and Comments/Responses 39–40, EPA has received and evaluated the Texas demonstration for the ''de minimis'' and ''insignificant'' thresholds and determined that the state's demonstration is consistent with the Minor NSR requirements and ability to tailor a Minor NSR program under the CAA and EPA's regulations. Texas has demonstrated that using the two thresholds will have no adverse impact upon the existing air quality in the State of Texas.

• 65 FR 2048, January 13, 2000—EPA's limited approval of the Delaware Minor NSR program. In that action, EPA granted limited approval of the Delaware Minor NSR public notice provisions because these rules were a strengthening of the SIP-approved public notice requirements. However, EPA did not grant a full approval because Delaware's submittal provided a 15-day period to request a public hearing for all permitting actions, which conflicts with the 30-day requirement in 40 CFR 51.161(b)(2). See 63 FR 16751, at 16753. Such a blanket exemption applied to all permitting actions with no demonstration submitted by the state. But, as discussed in Comments/Responses 39–40, the TCEQ has made a demonstration consistent with the requirements for public participation set forth in 40 CFR 51.161 for minor source permits that provides for Texas to tailor its public participation process for the subset of minor permit amendment applications below the ''de minimis'' and ''insignificant'' thresholds. Texas has demonstrated that using the two thresholds will have no adverse impact upon the existing air quality in the State of Texas. Moreover, these thresholds do not affect any part of the technical review of these minor permit amendment applications; or the requirements 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 below the ''de minimis'' and ''insignificant'' thresholds does not override any notice or technical requirements for PSD, NNSR, or new Minor NSR permit applications.

• 71 FR 48696, August 21, 2006. This is a proposal for EPA's Tribal NSR Rule, which was finalized several years later. See 76 FR 38748 on July 1, 2011. The rule promulgated a Federal Implementation Plan (FIP) for tribes in Indian country. In part, the FIP exempted from Minor NSR review sources with emissions below certain permitting levels based on a demonstration that ''sources with emissions below the thresholds will be inconsequential to attainment or maintenance of the NAAQS.'' 76 FR 38758. Under the approved Texas permitting program, new Minor NSR sources and minor modifications will go through the SIP-approved permit process and be evaluated by the TCEQ with respect to impact on the NAAQS and increment. For the subset of Minor NSR permit amendment applications that are below the ''de minimis'' and ''insignificant'' thresholds as discussed more fully in Comments/Responses 39–40, the TCEQ has demonstrated that using the ''de minimis'' and ''insignificant'' thresholds is still protective of NAAQS attainment and maintenance.

• 72 FR 45378, August 14, 2007—EPA's final rule on revisions to the Alaska NSR program. In that notice, EPA approved revisions to the public notice provisions for minor permitting which, for certain types of permits that meet specific requirements, gives the public 15 days to request a full 30-day public comment period on the draft permit. Otherwise the state will issue the permit based on the application without any opportunity for review and comment. See 72 FR 5232, at 5235. This Alaska program is not the same as the Texas program, and therefore not relevant to our rulemaking on Texas public participation. Under the approved Texas permitting program, new Minor NSR sources or minor modifications will go through the SIP-approved permit process and be evaluated by the TCEQ with respect to impact on the NAAQS and increment. Under the submitted public participation rules, all applications for new minor sources and the majority of minor permit amendment applications go through full notice and the public is given the opportunity to review the draft permit and the TCEQ's technical analysis. There is no separate requirement on the public to request this draft permit like there is in the approved Alaska program. For the subset of minor permit amendment applications that are below the ''de minimis'' and ''insignificant'' thresholds as discussed more fully in Comments/Responses 39–40, the TCEQ has demonstrated that it has tailored its public participation process in a manner that is consistent with the requirements for public participation set forth in 40 CFR 51.161 for minor source permits. Texas has demonstrated that using the two thresholds will have no adverse impact upon the existing air quality in the State of Texas. No revisions were made to the final rule as a result of this comment.

Comment 25: UT Law Clinic commented that Texas's justification for its *de minimis* levels in 30 TAC 39.402(a)(3)(B) is that they referenced the EPA SILs and/or a percentage of the NAAQS. This is not an adequate demonstration for purposes of showing that the exempted permitting changes will have a *de minimis* impact in terms of ambient air quality in their location. There is no specific analysis or modeling of how these emissions increases might impact maintenance of the NAAQS or the increments, particularly in areas that already exceed or are close to exceeding those limits.

Response 25: EPA disagrees with the commenter. The TCEQ submitted a sufficient demonstration that using the ''de minimis'' threshold will be protective of the NAAQS, as required by CAA 110(a)(2)(C). The comment does not add any specific analysis or details to the record to establish a basis for disapproval, and the commenter provided no alternative metric EPA should consider when evaluating the ''de minimis'' threshold. No revisions were made to the final rule as a result of this comment.

Comment 26: UT Law Clinic commented that Texas's proffered justification for the ''insignificant'' levels in 30 TAC 39.402(a)(3)(C) is also lacking. It is based on unenforceable assumptions about where agricultural sources covered by the rule will locate in the future and fails to provide an adequate demonstration that such emissions will not contribute to exceedances of the PM NAAQS in El Paso.

Response 26: EPA disagrees with the commenter. The TCEQ submitted a sufficient demonstration in support of the criteria established for applicability of the ''insignificant'' threshold, including an analysis of the effect on the PM NAAQS in El Paso. See 77 FR 74139. The comment does not add any specific analysis or details to the record to establish a basis for disapproval, and the commenter provided no alternative metric EPA should consider when evaluating the applicability of the ''insignificant'' threshold. TCEQ's submittal explains that the ''insignificant threshold'' 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.'' The submittal also demonstrates that the ''insignificant'' threshold applies to a limited number of minor amendments at facilities (approximately 10% of total amendment applications) dispersed across the State in 88 counties, many of them in rural areas of west Texas. Due to the nature and location of the activities at the relevant agricultural facilities, we anticipate that using the ''insignificant'' threshold will not impact nonattainment anywhere in or out of the State. Nevertheless, the Texas rules do provide for public notice for these amendments at the discretion of the TCEQ Executive Director under specified criteria that are consistent with the goal and purposes of the Act to provide an adequate opportunity for informed public participation. Further, under the approved Texas permitting program, all Minor NSR sources and modifications will go through the SIP-approved permit process and be evaluated by the TCEQ with respect to impact on the NAAQS and increment. Therefore the NAAQS and increment will continue to be protected. No revisions were made to the final rule as a result of this comment.

Comment 27: UT Law Clinic commented that in the past EPA has disapproved amendments to states' SIPs that attempted to relax the public participation standards for the minor stationary sources to the significance level, as Texas does here for certain agricultural sources. See 75 FR 51188 on August 19, 2010.

Response 27: EPA has reviewed the referenced August 19, 2010, proposed disapproval notice for Indiana. In the referenced Indiana rule, EPA proposed to disapprove a submittal from Indiana that would allow pollution prevention projects for sources that are not subject to title V and that do not result in a net increase in potential emissions above the PSD/NNSR significance levels to be processed as minor permit revisions under the Indiana minor operating permit provisions; meaning these revisions would be permitted without public notice. EPA proposed disapproval of the submitted rules because they weakened the SIP-approved requirements without adequate support for the SIP relaxation and because the state did not provide a 110(l) demonstration for the additional modifications to be exempted from notice. The existing Indiana SIP-approved Minor NSR rules required public notice for modifications with emission increases of greater than 25 tpy; the proposed rule would have exempted modifications from public participation up to the PSD/NNSR thresholds.

The August 19, 2010, proposed disapproval notice for Indiana is not analogous to the July 2, 2010, Texas public participation submittal. Contrary to the Indiana notice, the July 2, 2010, Texas submittal enhances the SIP by expanding the universe of minor permit amendments subject to public participation. See Comments/Response 20 and 21. Additionally, the TCEQ provided a demonstration for the establishment of the ''insignificant'' thresholds and EPA finds that the State's demonstration is adequate. Please see our proposal and Comment/Response 39–40 for further discussion about this demonstration from Texas. Finally, the Executive Director has discretion to require public notice for any minor permit amendment at agricultural facilities that are below the ''insignificant'' threshold. EPA therefore finds that the Indiana rule is not relevant to our rulemaking on the Texas public participation program. No revisions were made to the final rule as a result of this comment.

Comment 28: UT Law Clinic commented that the thresholds in 30 TAC 39.402(a)(3)(B) exceed those previously rejected by EPA as too high. See 77 FR 7531, 7532 on February 13, 2012. ''EPA never before denoted emissions increases as high as 15 tons per year as ''de minimis''.''

Response 28: EPA has reviewed the February 13, 2012, final notice to partially approve and partially disapprove revisions to the Montana permitting program. We disagree with the commenter that this notice is relevant to today's rulemaking on Texas Public Participation. In the Montana partial approval and partial disapproval, EPA disapproved the revisions to the de minimis permitting thresholds for asphalt concrete plants and mineral crushers where the de minimis permitting threshold for those sources was increased from five tpy to 15 tpy. EPA based our disapproval of the de minimis permitting threshold increase on lack of a 110(l) demonstration justifying the SIP relaxation. See 77 FR 7531, 7532. Texas has not relaxed its requirements, and has made an adequate demonstration to justify the scope of its minor NSR provisions. No revisions were made to the final rule as a result of this comment.

Comment 29: UT Law Clinic commented that the Texas rules fail to require public participation for amendments that exceed the significance level for fluorides and for emissions up to the significance level for lead.

Response 29: The Texas rules require minor permit amendments for non-agricultural facilities that are not subject to THSC § 382.020 to provide public notice if the state-established ''de minimis'' thresholds are exceeded (0.6 tpy of lead or 5 tpy of fluorides) and for agricultural facilities subject to THSC § 382.020, if the state-established ''insignificant'' thresholds are exceeded (25 tpy of fluorides). As explained previously, the State adequately justified the scope of its Minor NSR requirements. Moreover, a Minor NSR permit amendment for a change in character of emissions or release of an air contaminant not previously authorized under these new rules must go through notice. So if the facility, either subject to THSC § 382.020 or not, submitted a minor permit amendment application to add emissions of lead or fluorides that were not already authorized, that amendment now would be required to go through notice. Additionally, the Executive Director has discretion to require notice for any permit amendment that falls below the ''de minimis'' or ''insignificant'' thresholds. Furthermore, no modification that is major under the PSD or NNSR requirements is exempt from public participation. UT Law Clinic, in referencing ''significance'' levels, is referring to the levels at which projected emission increases to an existing major stationary source exceed the level and therefore must undergo PSD/NNSR Major permitting requirements. The Texas public participation rules are clear that the ''de minimis'' and ''insignificant'' thresholds apply only to Minor NSR permit amendments. No revisions were made to our final rule as a result of this comment.

Comment 30: UT Law Clinic commented that the proposed rules allow increases to occur with no public oversight even at major sources and synthetic minor sources that are already emitting high levels of emissions and adversely impacting surrounding communities. See 77 FR 38557, 38563 (synthetic minor sources ''should be treated for public participation purposes as major sources.''). Further, the commenter states that EPA proposed to approve Texas' exemption from all public participation for modifications, including those at major and synthetic minor sources; at major sources of HAPs; at sources in nonattainment areas that proposed to increase emissions of nonattainment pollutants; that alter the terms and conditions of Major NSR and PSD permits, and that allow increases in emissions that are not actually *de*

minimis. UT Law Clinic further states that the above identified modifications exempt from public participation are clearly not de minimis or insignificant modifications and Texas has not attempted to demonstrate, nor could it, that these modifications could be excluded entirely from its Minor NSR permitting program pursuant to 40 CFR 51.160(b).

Response 30: We disagree with the commenter's characterization of the submitted thresholds for certain minor permit amendments. The submitted ''de minimis'' and ''insignificant'' thresholds cannot be used for new major sources or major modifications subject to PSD or NNSR requirements. Additionally, section 112(g) of the CAA regulates HAPs and this program is not under the auspices of a CAA section 110 SIP; therefore, regulation of HAPs is outside the scope of today's rulemaking. 77 FR 74133. We believe that the commenter is indirectly challenging the federal rules for determining whether minor or major NSR SIP requirements apply to a proposed change. Under the CAA and federal regulations, PSD and Nonattainment NSR (NNSR) SIP requirements do not apply to minor modifications at major stationary sources or to minor modifications at minor sources (including synthetic minor stationary sources [3]). As such, EPA's authority to evaluate Texas's submitted Minor NSR program requirements for approval into the SIP is limited to the applicable Minor NSR requirements. By definition, the Texas ''de minimis'' and ''insignificant'' thresholds can only apply to minor modifications at existing minor and major stationary sources, i.e., Minor NSR requirements.

EPA has reviewed the referenced June 28, 2012, proposed limited approval and limited disapproval to the Nevada SIP and disagrees that the cited statement regarding synthetic minor sources is relevant to the proposed Texas rule. The referenced comment about synthetic minor sources being treated as major sources for purposes of public participation was specifically regarding the method in which the public notice is made available for the public—newspaper notice versus electronic notice. In this proposed LA/LD for Nevada, EPA stated that ''notice of permitting actions may be made by means other than traditional newspaper notice for most types of minor sources, EPA also believes that, with respect to synthetic minor sources, an exception should be made to the use of electronic means as the sole means to notify the general public of proposed permitting actions. For synthetic minor sources . . . we believe that the traditional means of notification (i.e., newspaper notice) should be included as one of the means for notifying the general public of proposed permit actions on the grounds that such sources should be treated for public participation purposes as major sources for which such notice is required.'' But EPA did not find the Nevada program's failure to provide newspaper ''notice with respect to synthetic minor sources to be significant,'' and did not propose disapproval on this basis. The July 2, 2010, Texas public notice submittal requires newspaper notice for all new major and minor stationary sources, major modifications, and minor permit amendments above the ''de minimis'' and ''insignificant'' thresholds. So, from that respect, construction of synthetic minor sources and minor modifications above the ''de minimis'' and ''insignificant'' thresholds will be required to provide newspaper notice consistent with the statements provided in our Nevada proposed LA/LD.

As discussed in Comment/Response 39–40, for the small subset of minor permit amendment applications that are below the ''de minimis'' and ''insignificant'' thresholds, the TCEQ has demonstrated that this tailoring of the scope of the Minor NSR requirements is consistent with the CAA and EPA's regulations and is protective of the NAAQS and maintenance. EPA notes that Texas has not proposed to exclude entirely from its SIP-approved Minor NSR permitting program those minor permit amendments that fall below the ''de minimis'' and ''insignificant'' thresholds. Moreover, although the commenter has asserted that the Texas thresholds ''exempt from public participation [modifications that] are clearly not de minimis or insignificant,'' it offers no evidence to support that assertion. In sum, the commenter has failed to show that EPA erred in determining that TCEQ adequately ''justified its approach for permit amendment applications with emissions less than'' the ''de minimis'' and ''insignificant'' thresholds. 77 FR 74137. No changes were made to our final rule in response to this comment.

Comment 31: UT Law Clinic commented that the rules do not require public participation for increases of emissions, such as NO_X or VOCs that are nonattainment pollutants in nonattainment areas and that may cause violations of the NAAQS, increments, or other control strategy requirements.

Response 31: This characterization of the rules is incorrect. Any new major stationary source or major modification subject to the requirements of NNSR permitting must go through public notice using the NORI and NAPD. The new rules also require minor permit amendment applications to go through NORI and NAPD if the amendment is for a change in the character of emissions or the release of an air contaminant not previously authorized. Further, the revised rules require NORI and NAPD public notice for all new minor sources and all minor permit amendments above identified ''de minimis'' and ''insignificant'' thresholds. Moreover, consistent with the provisions of 51.160(b), the Texas Minor NSR permitting provisions provide that the Executive Director may not issue a permit to any source that would cause or contribute to a NAAQS violation. (30 TAC 116.111(a)(2)(A).) The July 2, 2010, public participation rules do provide that applications for certain minor permit amendments that are below the ''de minimis'' and ''insignificant'' thresholds do not go through notice, except at the discretion of the TCEQ Executive Director. However, under the approved Texas permitting program, new Minor NSR sources and minor modifications will go through the SIP-approved permit process and be evaluated by the TCEQ with respect to impact on the NAAQS and increment. Therefore, pursuant to the Texas SIP at 30 TAC 116.111(a)(2)(A), the minor permit amendment will only be issued by the TCEQ if the applicant is able to demonstrate that the amendment will not cause violations of the NAAQS, increment or other provisions of the control strategy. The TCEQ will continue to use the permit review and approval process to protect the NAAQS, increment and applicable control strategy. No revisions were made to the final rule as a result of this comment.

Comment 32: UT Law Clinic commented that EPA Region 6 informed Texas in 2006 that the agency [EPA Region 6] had identified categories of Minor NSR permitting actions that are not *de minimis,* including any change where prospective emission increases by themselves would be a significant increase of any pollutant and any emission increases that involve netting out of major NSR or synthetic minor certifications. See Attachment A (Attachment 3—EPA Letter to Steve Hagle Regarding Comments on SIP revisions for Public Participation,

[3] A synthetic minor source is an air pollution source that has the potential to emit air pollutants in quantities at or above the major source permitting threshold levels, but has accepted federally enforceable limitations (such as permit restrictions) to keep the emissions below such major source levels.

August 14, 2006). Texas proposed exemptions from public participation include modifications that fall within the categories EPA has expressly identified as not *de minimis.*

Response 32: The commenter references the August 14, 2006, comment letter from Mr. David Neleigh, EPA Region 6 Air Permits Section Chief, to Mr. Steve Hagle of the TCEQ on the proposed public participation rules at that time [the rules upon which EPA initially proposed LA/LD in 2008 and withdrew after TCEQ adopted and submitted revised rules in July 2010]. This letter identifies previous rulemakings and interprets those rulemakings to portray the position noted by the commenter. However, that position is not actually articulated in the rulemakings that the letter cites. See Comment/Response 24. Consequently, the letter fails to accurately represent EPA's official position. EPA's official position is reflected in today's final action.

Under the Texas program, all construction of major stationary sources must go through full major NSR review including public participation. All major modifications to existing major or minor stationary sources must go through full major NSR review including public participation. All construction of new minor stationary sources must go through full Minor NSR review including public participation. All minor modifications to existing major or minor stationary sources must go through full Minor NSR review, and include public participation unless they meet either the ''de minimis'' or ''insignificant'' thresholds. There is a slim chance under the ''insignificant'' threshold that a minor modification approaching the synthetic minor limit may not require public participation. Nevertheless, the state has demonstrated that using the ''insignificant'' threshold will not allow interference with the NAAQS. Besides demonstrating that using the two thresholds will not result in any violation of the NAAQS or any control strategy, the State has included a consistent mechanism that gives constrained authority to the Executive Director to require public participation for minor permit amendments that would otherwise be below one of the two thresholds.

As explained in Comments/Responses 39–40, permitting authorities have the discretion to tailor the Minor NSR permit program. The TCEQ has developed the ''de minimis'' and ''insignificant'' thresholds, and for minor permit amendment applications with emissions less than these thresholds, the TCEQ justified its approach using the *de minimis* principles like those established in *Alabama Power.* See the June 18, 2010 Texas Register, pages 5224–5230. Therefore, we are approving the Minor NSR ''de minimis'' and ''insignificant'' thresholds. The commenter has failed to dispute the demonstration provided by Texas. EPA believes that the NAAQS and increment will continue to be protected because the TCEQ still must follow the SIP-approved permitting process. If EPA discovers evidence to support the determination that the TCEQ were found to be misapplying the Minor NSR SIP permit rules or an applicant is found to be using the public notice ''de minimis'' and ''insignificant'' thresholds in an attempt to circumvent any NSR requirements, then EPA or the public could address this implementation failure on a permit specific basis or other CAA remedy mechanism such as a failure to implement action. No revisions were made to the final rule as a result of this comment.

Comment 33: UT Law Clinic commented that the Texas rules allow sources to use a netting process to determine their total emission increases without any public oversight and allow them to calculate those emissions increases taking into consideration voluntary, unenforceable control technologies.

Response 33: EPA believes that the commenter may be misconstruing/misunderstanding the EPA NSR SIP rules. The federal Major NSR SIP requirements allow a state to provide for a netting process to determine if a proposed modification to an existing major stationary source is major or minor. First, this netting process takes into consideration the control technologies that will be applied to the proposed change. (The control technology assumption must be made enforceable through the issuance of the permit for the netting process to meet the NSR SIP requirements.) Next, one looks to what are the emission increases of the proposed modification by itself. If the emission increases of the proposed modification by itself are above the significance level, then the contemporaneous window is evaluated to see if there is a net increase of emissions considering all other increases and decreases. If the calculation of the netting is above the significance levels, then the proposed modification to the existing major stationary source is major and is subject to full public participation. Therefore, the public can comment upon the netting calculations if they so choose. If the calculation of the netting is below the significance level/rate, then the proposed modification to the existing major stationary source is minor. Under the Texas NSR SIP, this minor modification can be authorized by a minor permit amendment or another SIP-approved minor NSR mechanism such as a PBR or SP. Under the rules approved today, full public participation for a minor permit amendment is required unless the change is below either the ''de minimis'' or ''insignificant'' thresholds. Therefore, the public now will have an opportunity to review the netting calculations and comment upon them in the Texas public participation process for all amendments resulting in emissions increases above the two thresholds and for amendments below the thresholds if the Executive Director so requires.

Under the federal NSR SIP rules, the requirements for a modification to a minor existing stationary source are very different from those described above for a modification to a major existing stationary source. The proposed change can be above the major NSR significance levels but regardless still is defined under the federal SIP rules, as a minor modification. This proposed change would only be required to be permitted under the major NSR SIP requirements if the proposed increase in emissions is the same as the emission rate for a major stationary source.

EPA recognizes the public's role in a viable major NSR SIP permitting program is to review and comment on the netting calculations to hold the permitting authority accountable. For instance, project netting—wherein a source calculates the projected increases for the project simultaneously with decreases from other projects—before determining if the project itself is significant, is a circumvention of NSR SIP requirements. Project netting is not provided for in the approved Texas NSR SIP permitting program, nor is it provided for in the Texas public notice rules acted upon today. If EPA discovers evidence to support the determination that the TCEQ were found to be misapplying the NSR SIP permit rules or an applicant to be using the ''de minimis'' and ''insignificant'' thresholds in an attempt to circumvent major NSR applicability, then EPA or the public could address this implementation failure on a permit specific basis or other CAA remedy mechanism such as a failure to implement action. No revisions were made to the final rule as a result of this comment.

Comment 34: UT Law Clinic commented that Texas facilities are already using the rules, as adopted in Texas, to avoid public participation for

changes such as authorizing maintenance, startup, and shutdown emissions, which are clearly not *de minimis.*

Response 34: Under the rules being approved today, where the inclusion of MSS emissions constitutes a major modification subject to PSD or NNSR permitting then the facility must go through full public notice with the NORI and NAPD. Under the rules being approved today, MSS emissions that constitute a minor modification can be included in a minor permit amendment that must go through full public notice unless the change is below either the ''de minimis'' or ''insignificant'' thresholds. There are other SIP-approved permit mechanisms available for including minor MSS emissions; these include permit alterations, permits by rule, and standard permits. Each of these three permitting mechanisms is outside the scope of this public participation rulemaking action. In the event the facility chooses to use a minor permit amendment, then the minor permit amendment will be subject to notice if the emission increases associated with the minor permit amendment exceed the ''de minimis'' or ''insignificant'' thresholds. The TCEQ Executive Director also has discretionary authority to require public notice for those minor permit amendment applications that are below the ''de minimis'' and ''insignificant'' thresholds and would not otherwise receive full notice. Again, this process is an improvement over the existing SIP-approved process that requires no public notice for minor permit amendments. It also does not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. CAA 110(l). Also, the permit process itself ensures that the emissions are permitted and enforceable. No revisions were made to the final rule as a result of this comment.

Comment 35: UT Law Clinic commented that the provisions submitted by Texas at 30 TAC 39.402 exempt large categories of modifications that have the potential to violate the SIP and interfere with attainment or maintenance.

Response 35: EPA disagrees with the commenter. The TCEQ did not submit and EPA did not evaluate any provisions to exempt new sources or modifications (whether major or minor) from permit requirements. Our action is solely regarding the public notification process in the Texas air permitting program. As explained previously, the submitted rules do not require public participation for certain Minor NSR permit amendment applications with emissions below the ''de minimis'' or ''insignificant'' thresholds. However, because these Minor NSR permit amendment applications must continue to be reviewed and processed through the SIP-approved permit process, the TCEQ will continue to issue permits protective of the NAAQS. If EPA discovers evidence to support the determination that the TCEQ were found to be misapplying the Minor NSR SIP permit rules or an applicant using the ''de minimis'' and ''insignificant'' thresholds in an attempt to circumvent any NSR requirements, then EPA or the public could address this implementation failure on a permit specific basis or other CAA remedy mechanism such as a failure to implement action. No revisions were made to the final rule as a result of this comment.

Comment 36: UT Law Clinic commented that EPA proposes to approve rules that allow significant increases in emissions and changes to terms and conditions of NSR and PSD permits without any public participation.

Response 36: EPA disagrees with the commenter. Construction of any new major stationary source must go through public notice. Any major modification must go through public notice. Construction of any new minor stationary source must go through public notice. Minor modifications to minor or major stationary sources must go through public notice except for those below the ''de minimis'' or ''insignificant'' thresholds. And the state has demonstrated that minor permit amendment applications using the established ''de minimis'' or ''insignificant'' thresholds will not affect NAAQS attainment or maintenance. The rules address public participation only and do not address increases in permitted emissions. Under the federal NSR SIP program, there can be what is defined as ''significant emission increases'' that fall under the Minor NSR SIP requirements, not the Major NSR SIP requirements. It is only when there is a ''significant emission increase'' to an existing *major* stationary source that this increase falls under the Major NSR SIP requirements. If the increase is to a minor stationary source and yet is above the ''significant emission increase,'' the federal rules allow this change to be authorized through the Minor NSR SIP program. Therefore, under the action taken today, under the Texas SIP, minor modifications to major or minor stationary sources must go through public notice unless the change is below either the ''de minimis'' or ''insignificant'' thresholds. The commenter appears to be indirectly challenging the federal SIP rules for how one determines applicability for major and Minor NSR; concerns regarding major and minor NSR applicability are outside the scope of this rulemaking. Our action taken today approving the ''de minimis'' and ''insignificant'' thresholds, does not prohibit all public participation for all modifications. We are approving an exemption from public participation only for certain minor permit amendments that meet either of the two thresholds; TCEQ has demonstrated that use of either of these two thresholds will not affect attainment or maintenance of the NAAQS. By definition, the Texas public notice exemptions for minor permit amendments below the public notice ''de minimis'' and ''insignificant'' thresholds can only apply to minor modifications at existing minor and major stationary sources. Under the CAA and federal regulations, PSD and NNSR SIP requirements do not apply to minor modifications at major stationary sources or to minor modifications at minor sources. As such, EPA's authority to evaluate Texas's submitted Minor NSR exemptions for approval into the SIP is limited to the applicable Minor NSR requirements. No revisions were made to the final rule in response to this comment.

Comment 37: UT Law Clinic commented that EPA's approval of the Texas rules in 30 TAC 39.402(a)(3), would exempt permits by rule (PBRs) from SIP public participation requirements. By utilizing a PBR to authorize increases in emissions, sources thereby avoid public participation for Minor NSR changes that should be subject to at least 30-day notice and comment. If EPA finalizes its proposed approval, there would not appear to be any provisions in the SIP governing public participation for PBRs. Commenter also submitted information about how the PBR program works.

Response 37: The Permit by Rule program at 30 TAC Chapter 106 is outside the scope of today's rulemaking. EPA approved the PBR program into the SIP such that the initial development and adoption of a PBR goes to public notice, but the individual issuance or authorization of a PBR to a facility is exempt from public notice. *See* 68 FR 64543. The July 2, 2010 submittal does not change our SIP-approval of the PBR program.

Comment 38: UT Law Clinic requested that EPA disapprove the provisions at 30 TAC 39.402.

Response 38: As explained in previous Comments/Responses we do not agree that the provisions at 30 TAC 39.402 are inconsistent with federal requirements or represent a weakening of the existing SIP-approved requirements. No changes have been made to the final rule as a result of this comment.

Comments Regarding the Minimum Federal Requirements for Public Participation and EPA's Use of Alabama Power de minimis Principles

Comment 39: UT Law Clinic commented that the regulations at 40 CFR 51.161(a) and (b) plainly set minimum public participation requirements. These regulations state that the SIP ''must'' require the opportunity for public comment and that ''as a minimum'' the comment period must last 30 days. The commenter also provided the regulatory language and history of 40 CFR 51.161 to support the statement that rules regarding notice and public participation apply to all permitting actions.

1. In 1983, EPA proposed to restructure and revise the SIP preparation regulations. *See* Restructuring SIP Preparation Regulations, 48 FR 46152 (Oct. 11, 1983).

a. Among other things, the proposed rule moved the regulations for notice and public participation from 40 CFR 51.18 to §§ 51.160 and 51.161.

b. Additionally, EPA proposed to narrow the scope of the requirement (then contained in 40 CFR 51.18(h)(4)) that forced ''States to notify EPA of all air permitting actions pertaining to new sources or modification to existing sources'' to only apply to ''major sources in nonattainment areas, . . . or for lead, those sources covered under § 5l.l(k)(2).'' 48 FR at 46156.

c. In the proposal, EPA explained that the change was due to the fact that it ''primarily needs permitting information from only major new sources or major modifications of existing sources in nonattainment areas.''

2. In 1986, EPA finalized the restructuring and revision of the SIP preparation regulations. 51 FR 40656.

a. In response to comments in opposition to the proposal to narrow the scope of the notice standard, EPA dropped the proposal and kept the original language largely in place when it moved 40 CFR 51.18(h)(4) to § 51.16l(d).

b. The final rule explained:

i. A commenter opposed the proposal to drop requirements for States to notify EPA of permitting actions for all minor sources and for all sources outside nonattainment areas [§ 51.161(d)] on the grounds that new source review is a central part of the prevention of significant deterioration (PSD) and the air quality maintenance plan process and that notification is needed for EPA oversight. The provisions governing PSD procedures, § 51.24, require States to notify EPA of permitting actions for major sources outside nonattainment areas. The deletion from § 51.161(d) did not affect those requirements, only the notification requirements for minor sources.

ii. However, EPA agrees that where State or local agency review of new or modified minor sources is required, it should be notified of permitting action for such sources.

iii. The very fact that such sources are subject to review indicates that it would be appropriate to require that EPA be notified of permitting actions on such sources for oversight purposes.

iv. Moreover, a large number of minor sources could have a significant cumulative effect on air quality.

v. Thus, under the authority of sections 110 and 301 of the Act, the proposed § 51.16l(d) has been modified so that it now is essentially identical to existing § 51.18(h)(4). Hence, EPA will require reporting of all State permitting actions, as required in the existing SIP regulations.

The commenter states that EPA's prior interpretation [the 1983–1986 rulemaking history of 40 CFR 51.161 cited above] makes clear that the regulations apply to ''all State permitting actions.'' If the EPA wants to omit minor sources from the notice and public participation requirements, it must go through the notice and comment process. Finally, the commenter states that the narrowing of the universe of permit modifications that go through public notice is inconsistent with 40 CFR 51.160–51.161.

Response 39: EPA does not find this comment on the 1986 rulemaking relevant. In the quoted language in the 1986 final rulemaking, EPA focused on the requirement in 40 CFR 51.161(d) to notify EPA of minor permitting actions. As the commenter indicates, EPA ultimately decided to retain that notification to EPA requirement for Minor NSR state permitting actions requiring public notice. Secondly, EPA received no specific comments during our rulemaking on the Texas Public Participation program as to whether Texas's public participation program meets 40 CFR 51.161(d).

For the second comment that the regulations at 40 CFR 51.161(a) and (b) plainly set minimum public participation requirements, EPA reviewed the submitted rules against all the requirements of 40 CFR 51.160 and 51.161. They cannot be read in isolation but in conjunction with each other.

The Federal requirements for Minor NSR permit applications and public notice requirements at 40 CFR 51.160 and 161 generally require 30 days public review for all sources subject to 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.[4] 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.

EPA recognizes a state's ability to tailor the scope of its Minor NSR program as necessary to achieve and maintain the NAAQS. *See* 76 FR at 38756 (EPA regulation creating minor source program for Indian country, recognizing that CAA 110(a)(2)(c) provides discretion in developing a minor source program ''so long as the NAAQS are protected.''). As explained in our proposal at 77 FR 74129, at 74136–74140 and Comment/Response 40, TCEQ's submittal appropriately tailored application of the Minor NSR permitting requirements. TCEQ explained its approach of setting the two thresholds using *de minimis* principles like those established in *Alabama Power.* Under TCEQ's tiered program, all new Minor NSR construction permits and the majority of Minor NSR permit amendments go through full public notice.

Finally, there is no narrowing of the universe of permit modifications that go through public notice; rather there is an expansion for minor modifications. Please see Comments/Responses 20 and 21. No changes were made to the final rule as a result of this comment.

Comment 40: UT Law Clinic commented that EPA cannot use *Alabama Power* to justify creating exemptions from its own regulations.

[4] 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.

Response 40: Consistent with the requirement for ''determining which facilities will be subject to review'' under a minor source SIP at 40 CFR 51.160, EPA has recognized that states may tailor their Minor NSR permitting requirements. EPA is not relying on *Alabama Power* to ''creat[e] exemptions from its own regulations.'' Instead, EPA is using an inquiry similar to that used in *Alabama Power*—whether there is a ''de minimis'' impact—in applying its SIP regulations and regulating permit amendments to determine whether the submitted Texas rules meet the Act and EPA regulations. Texas established a ''de minimis'' threshold based on its ''insignificant emissions rates and insignificant emissions impact.'' See 77 FR at 74138. Similarly, Texas established an ''insignificant'' threshold for agricultural sources based on their limited effects. See 77 FR 74139.

As explained in our proposal at 77 FR 74129, at 74136–74140, the submitted Texas public participation provisions create a tiered program, wherein two narrow types of Minor NSR amendment applications that have been defined by TCEQ as ''de minimis'' or ''insignificant'' will not automatically be required to go through the public notice process. As noted, the State justified the scope of its regulatory program using *de minimis* principles like those established in *Alabama Power.* Moreover, Texas limits the effects of applying the two thresholds by providing for public notice for minor permit amendments that would otherwise be exempt at the discretion of the TCEQ Executive Director based on the objective criteria established in 30 TAC 39.402(a)(3)(D). For EPA's full analysis of Texas's demonstration for the ''de minimis'' and ''insignificant'' thresholds, please see our proposal at 77 FR 74129, at 74136–74140. There is a full discussion of the two thresholds in the proposal and how Texas analyzed their impacts; how the ''de minimis'' threshold is based on EPA's significant emission rates and significant impact levels that together are used to determine whether a proposed minor source or minor modification will have a significant permitting impact; and how the ''insignificant'' threshold applies to a limited subcategory of sources, is limited in scope, represents a small subset of the permit amendment universe, and is consistent with the requirement to ensure the NAAQS are achieved.

Note that applicability of the ''de minimis'' and ''insignificant'' thresholds in no way relieve the applicant or the TCEQ of the technical burden to demonstrate that the proposed minor change will assure noninterference with attainment and maintenance of the NAAQS and that the proposed minor modification will comply with all CAA and Minor NSR requirements. Further, neither of Texas's thresholds affects any part of the technical review of these minor permit amendment applications, and they do not override any notice or technical requirements for PSD, NNSR or new Minor NSR permit applications.

In this instance, we find that the Texas ''de minimis'' and ''insignificant'' thresholds are approvable. However, we note that our approval is limited to the specific record before us and in the context of the Texas air permitting program as a whole. No changes were made to the final rule as a result of this comment.

Comment 41: UT Law Clinic commented that the D.C. Circuit recently affirmed that implied authority is not available for a situation ''where the regulatory function does provide benefits, in the sense of furthering the regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs.''

Response 41: We agree that *Alabama Power* does not confer the administrative authority to create exemptions to requirements based on a cost-benefit analysis. *Alabama Power,* 636 F.2d at 357 and 361. However, EPA's approval of Texas's ''de minimis'' and ''insignificant'' thresholds is not based on a cost-benefit analysis, but rather based on Texas's demonstration that using either of the thresholds will not have an adverse impact on the existing air quality in the State of Texas. See our proposal at 77 FR 74129, at 74136–74140 and Comments/Responses 39 and 40 for additional information on the adequacy of Texas's demonstration. No changes were made to the final rule as a result of this comment.

Comments Regarding Confidential Information

Comment 42: UT Law Clinic commented that EPA should require Texas to amend its rules as necessary to ensure that all emissions data that is included with permit applications is made available for the entire public comment period.

Response 42: As explained in our proposal FRN, the accompanying TSD and in today's final rule, the Texas rules for public participation for air quality permit applications are consistent with the federal requirement at 40 CFR 51.161 that the information submitted by the applicant be made available for public review and inspection during the applicable public comment period. While the federal government has long recognized the right of businesses to make claims of confidentiality in submitting information to its agencies (*see, e.g.,* FOIA, 5 U.S.C. 552(b)(4)[5]; *see also* 18 U.S.C. 1805[6]; *see also* 40 CFR 2.203[7]), the Clean Air Act has made clear that ''emission data'' contained in records held by EPA are not entitled to confidential treatment and shall be publicly available (*see* CAA section 114(c)[8]; *see also* 40 CFR 2.302[9]). The Texas Open Records Act (adopted 1973, and as amended May 27, 1975) and Texas Attorney General Opinion No. H–539 were submitted by Texas and approved by EPA as part of the Texas SIP on December 15, 1981, at 46 FR 61124–61125 to show that the Texas environmental agency is required to make emissions data available to the public. This Act was repealed in 1993 and replaced by the Public Information Act now codified in the Texas Government Code at Chapter 552. The codification of the Act was a non-substantive revision. If a state agency wishes to withhold information from the public, it must request an opinion from the Texas Attorney General that the requested information falls within one of the enumerated exceptions. This is necessary because the Texas Act presumes that governmental records are open to the public unless the records are within one of the exceptions.[10] The Attorney General is required to construe the Act liberally in favor of open government.[11] The governing Texas law, Texas Attorney General Opinion No. H–539 (dated February 26, 1975) and part of the Texas SIP, held that ''emission data supplied to the Texas Air Control Board may not be treated as confidential under any provision of the Texas Clean Air Act or the Open Records Act, and that the Board is required to release such information upon request.'' Although not believed to be part of the

[5] FOIA's longstanding exemption for ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.''

[6] Making it a crime for federal employees to disclose confidential information ''in any manner or to any extent not authorized by law.''

[7] EPA regulation on the ''method of asserting business confidentiality claim.''

[8] Requiring records to be available to the public, unless they are confidential and not ''emission data.'' Disclosure to the public is similarly mandated for ''emission data'' in the context of automobile manufacturing under Title II. *See* CAA section 208(c).

[9] ''Special rules governing information obtained under the Clean Air Act'' and defining the term emission data.

[10] *See* Attorney General Opinion H–436 (1974); Open Records Decision Nos. 363 (1983), 150 (1977), 91 (1975).

[11] Open Records Decision No. 363 (1983) (information is public unless it falls within specific exception).

SIP, a Texas Attorney General Opinion No. H–836 (dated June 14, 1976) affirms, ''emissions data is clearly public information'' (even in acknowledging that information ''on amount, type and rate of emissions from a particular unit might enable a person to determine how the process itself functions''). There has been continual reaffirmation of the bright-line rule that emission data is non-confidential. See Attorney General Open Record Rulings from 2005 to 2010.

The EPA has therefore determined through our review of the July 2, 2010, submitted public participation rules and the relevant Texas legislative authorities and governing Attorney General Opinion No. H–836, that the Texas rules already require that emissions data be made publicly available. If EPA discovers evidence to support the determination that the TCEQ or permit applicants are misapplying the SIP rules in an attempt to prevent the public from having a meaningful opportunity to comment on emissions data, then EPA could address this issue on a permit by permit basis using its oversight authority in implementation of the Texas air permit program or other CAA remedy mechanism such as a failure to implement action. No revisions were made to the final rule as a result of this comment.

Comment 43: UT Law Clinic commented that current Texas law gives the applicant for an air permit the sole authority to initially determine the confidentiality of materials in its own application and requires TCEQ to seek an opinion from the Texas AG before disclosing any information labeled as confidential by an applicant. As a result, nonconfidential information that is necessary to provide full public participation on an application and that is required to be available in a public location during the full public comment period may be unavailable until after the close of a comment period. Further, Texas' rules do not ensure that emissions data labeled as confidential information will be made available for public comment before the 30-day comment period expires. The withholding of emissions data as confidential also creates a problem with respect to the enforceability of minor NSR limits created through permits by rule. This compounds the public participation issue because, even after the fact, affected communities will not be able to find out what changes were authorized by a minor permit.

Response 43: The concerns raised by the commenter about the application of the Texas CBI laws are outside the scope of today's rulemaking. This concern raises issues regarding the implementation of the Texas SIP and is not relevant to the particular public participation rules being acted upon today. The public participation rules acted upon today maintain the SIP's public participation requirements for major NSR and expand the SIP's public participation requirements for minor NSR. The availability of emissions data is not the subject of these rules. As discussed previously in Comment/Response 42, the Texas NSR public participation SIP rules already require that emissions data be made available for public review during the comment period. The Texas relevant legal authorities in the SIP and later continue to affirm that emissions data is not confidential and must be released to the public. If EPA discovers evidence to support the determination that the TCEQ or permit applicants are misapplying the existing Texas NSR public participation SIP rules in an attempt to prevent the public from having a meaningful opportunity to comment on emissions data, then EPA could address this issue on a permit by permit basis using its oversight authority in implementation of the Texas air permit program or other CAA remedy mechanism such as a failure to implement action. No changes were made to today's final rule as a result of this comment.

Comment 44: The UT Law Clinic also submitted portions of a supplement to a petition filed in 2009 by the commenter and other groups that raises concerns with Texas CBI laws and public participation.

Response 44: EPA disagrees that the submitted portions of the January 5, 2009 Supplement (Supplement to Citizen Petition for Action Pursuant to the Clean Air Act Regarding Inadequacies of the Texas Sip and Federal Operating Permit Program and Failure to Enforce the Plan and State Permitting Programs) relating to confidential document and CBI are relevant to the public participation rulemaking in front of us. EPA reviewed the resubmitted 2009 petition supplement and the associated attachments. We isolated the following discrete comments relating to confidential documents and CBI. We are responding to each of these comments below to demonstrate that the petition, petition supplement and relevant attachments are no longer applicable to the July 2, 2010 public participation SIP submittal that we are approving in today's final action. Further, our responses to the following comments satisfy EPA's obligations to respond on these specific issues from the 2009 petition supplement.

- *Comment 44A:* The Texas Health and Safety Code prohibits the TCEQ from disclosing to the public of any information ''relating to secret processes or methods of manufacture or production that is identified as confidential when submitted.'' TEX.HEALTH & SAFETY CODE § 382.041. It also prohibits TCEQ from disclosing such information to EPA unless EPA has entered into an agreement to treat ''information identified as confidential as though it had been submitted by the originator of the information with an appropriate claim of confidentiality under federal law.'' *Id.* This section unlawfully requires TCEQ to defer to an applicant's or permittee's determination of what constitutes confidential information. It limits public and EPA access to information, such as emissions data, that is public information under the federal Clean Air Act. It also purports to require EPA to agree to limits on public disclosure of information beyond those limits authorized by federal law.
- *Comment 44B:* Further, in practice, this provision results in TCEQ referring any and all requests for information marked by the applicant as confidential to the Texas AG's office. Often a response from the AG's Office as to whether information truly qualifies as confidential cannot be obtained until it is too late to use the information for its intended purpose. It is routine for companies to mark as confidential information regarding their calculations of emission estimates, therefore, preventing the public from determining whether such emissions are realistic.
  - *Response 44A and 44B:* EPA disagrees with the commenter that this issue is relevant to EPA's approval of the public participation rules as submitted July 2, 2010. As outlined in Comment/Response 42 and 43, the EPA considers that ''emissions data'' as defined in 40 CFR 2.302 must be publicly available information pursuant to the Texas SIP and relevant legal authorities. If EPA discovers evidence to support the determination that the TCEQ or permit applicants are misapplying the Texas SIP rules in an attempt to prevent the public from having a meaningful opportunity to comment on emissions data, then EPA could address this issue on a permit by permit basis using its oversight authority in implementation of the Texas air permit program or other CAA remedy mechanism such as a failure to implement action. No revisions were made to the final rule as a result of this comment.

Comment 45: UT Law Clinic commented that the face of Texas'

public notices do not identify the date that the public comment period closes. Instead, the notice normally states that the comment period ends a certain number of days after publication.

Response 45: EPA agrees that having a specific date would assist the public in easily identifying the close of the comment period. However, there is no federal requirement for a date specific end date to be included in the public notice. The Texas public notice requirements specifying a 30-day comment period meets the minimum federal requirements at 40 CFR 51.161 and 51.166 as applicable. No revisions were made to the final rule as a result of this comment.

Comments Regarding Judicial Review

Comment 46: The UT Law Clinic commented that the current requirements to participate in a contested case hearing in Texas are overly burdensome and therefore provide inadequate judicial review of air permitting decisions. Judicial review of the TCEQ's air permitting decisions appears to be limited to persons who participated in a contested case hearing. *Friends of Canyon Lake, Inc.* v. *Guadalupe-Blanco River Auth.,* 96 SW.3d 519, 526–27 (Tex. App.-Austin 2002, pet. denied); *see also, Rawls* v. *TCEQ,* 2007 WL 1849096 (Tex. App.-Eastland 2007). In order to qualify for a contested case hearing, a member of the public must satisfy TCEQ's definition of ''an affected person.'' Since a person must request a contested case hearing before seeking judicial review of an air permitting decision, the availability of judicial review for a large percentage of air permitting actions at TCEQ is limited.

Response 46: The Texas Contested Case Hearing (CCH) process is outside the scope of our proposed rulemaking for the July 2, 2010 public participation submittal. The TCEQ did not submit the CCH process for SIP review and approval, therefore EPA is not taking action on the CCH process in this action. No revisions were made to the final rule as a result of this comment.

Comments Regarding Past Public Notice Inadequacies

Comment 47: UT Law Clinic commented that approval of these rules [July 2, 2010 public participation rules] would exacerbate public participation inadequacies that Texas communities have complained about for years. To illustrate the past inadequacies, the UT Law Clinic also submitted portions of a petition filed in 2008 and a supplement to the petition filed in 2009 by the commenter and other groups that raises problems with the Texas public participation process, some of which will be exacerbated by EPA's approval.

Response 47: EPA disagrees that the submitted portions of the August 28, 2008 petition (Citizen Petition for Action Pursuant to the CAA Regarding Inadequacies of the Texas SIP and Federal Operating Permit Program and Failure to Enforce the Plan and State Permitting Programs) and the January 5, 2009 Supplement (Supplement to Citizen Petition for Action Pursuant to the Clean Air Act Regarding Inadequacies of the Texas Sip and Federal Operating Permit Program and Failure to Enforce the Plan and State Permitting Programs) relating to public participation are relevant to the rulemaking in front of us. EPA reviewed the resubmitted 2008 petition, 2009 petition supplement, and the associated attachments. We isolated the following discrete comments relating to public participation. We are responding to each of these comments below to demonstrate that the petition, petition supplement and relevant attachments are no longer applicable to the July 2, 2010 public participation SIP submittal that we are approving in today's final action. Further, our responses to the following comments satisfies EPA's obligations to respond on these specific issues from the 2008 petition and 2009 petition supplement.

- *Comment 47A:* EPA has informed Texas that its public participation rules are not consistent with Part 51. Deficiencies in the rules include that the notice of the draft permit is not required for many permitting actions involving minor sources or minor modifications at major sources. Texas' rules do not require public notice and comment on the State's preliminary analysis and draft permits for permitting actions involving construction or modification of minor sources, or for minor modifications at major sources if a public hearing is not requested in response to the ''first notice,'' or is withdrawn, or the application involves no increase in allowable (rather than actual) emissions or emissions of new contaminants.
  - *Response 47A:* This comment is no longer relevant. The commenter is referencing EPA's proposed limited approval/limited disapproval of the Texas public participation program published on November 26, 2008. EPA withdrew our proposed LA/LD on November 5, 2010, after the TCEQ adopted and submitted revised public participation rules. The rules submitted as revisions to the Texas SIP on July 2, 2010, require that all permit applications for new minor sources go through the NORI and NAPD, regardless of a public hearing request. This requirement will ensure that the draft minor permit is available for review and comment. The revised rules also require minor permit amendment applications to go through NORI and NAPD if the amendment is for a change in the character of emissions or the release of an air contaminant not previously authorized, or if the amendment exceeds the public notice ''de minimis'' or ''insignificant'' thresholds. No changes were made to the final rule as a result of this comment.
- *Comment 47B:* EPA has informed Texas that its public participation rules are not consistent with Part 51. Deficiencies in the rules include that public notice is not required for all permit amendments, and initial and amended flexible permits. Chapter 116.116(b) amendments and flexible permit issuances and amendments, including those that may alter terms and conditions of existing major NSR authorizations, are not required to meet Part 51 notice requirements unless emissions exceed certain thresholds. These thresholds are not environmentally insignificant.
  - *Response 47B:* The commenter is referencing EPA's proposed limited approval/limited disapproval of the Texas public participation program published on November 26, 2008. EPA withdrew our proposed LA/LD on November 5, 2010, after the TCEQ adopted and submitted revised public participation rules. The July 2, 2010 public participation submittal included revised public participation procedures specific to applications for initial and amended flexible permits. As explained in Comment/Response 6, EPA is taking no action at this time on the public participation rules submitted on July 2, 2010, applicable to Flexible Permit applications. Insofar as this comment concerns permit amendments not related to Flexible Permits, as explained in Comments/Responses 17–19, the revised rules require full public notice for all permit amendments above identified public notice ''de minimis'' and ''insignificant'' thresholds. No changes were made to the final rule as a result of this comment.
- *Comment 47C:* EPA has informed Texas that its public participation rules are not consistent with Part 51. Deficiencies in the rules include the notice of draft permit not required for all Plantwide Applicability Limit (PAL) Permits and agency preliminary determinations. In addition, Texas' rules do not require the agency to respond to comments before taking action on PAL applications.

◦ *Response 47C:* This comment is no longer relevant. The commenter is referencing EPA's proposed limited approval/limited disapproval of the Texas public participation program published on November 26, 2008. EPA withdrew our proposed LA/LD on November 5, 2010, after the TCEQ adopted and submitted revised public participation rules. The rules submitted as revisions to the Texas SIP on July 2, 2010, require that all permit applications for PAL permit applications go through NAPD notice. This requirement will ensure that the draft PAL permit is available for review and comment. The revised public participation rules also require that the TCEQ will respond to all comments received before a PAL permit is issued. No changes were made to the final rule as a result of this comment.

• *Comment 47D:* EPA has informed Texas that its public participation rules are not consistent with Part 51. Deficiencies in the rules include that Texas' rules and exhaustion of administrative remedies requirements limit state court judicial appeals.

◦ *Response 47D:* This comment is no longer relevant. The commenter is referencing EPA's proposed limited approval/limited disapproval of the Texas public participation program published on November 26, 2008. EPA withdrew our proposed LA/LD on November 5, 2010, after the TCEQ adopted and submitted revised public participation rules on July 2, 2010. See Comment/Response 46 above for a discussion of judicial review. No changes were made to the final rule as a result of this comment.

• *Comment 47E:* EPA has informed Texas that its public participation rules are not consistent with Part 51. Deficiencies in the rules include that the De Minimis Facilities rules at 30 TAC 116.119 allow the agency to exempt categories of sources, as well as individual facilities, from permitting and public participation requirements without first requiring SIP approval of those exemptions.

◦ *Response 47E:* The TCEQ has not submitted the provisions for permitting of De Minimis Facilities at 30 TAC 116.119 for SIP review. Therefore, public participation requirements relevant to permitting under 30 TAC 116.119 are outside the scope of today's final action. No changes were made to the final rule as a result of this comment.

• *Comment 47F:* EPA has informed Texas that its public participation rules are not consistent with Part 51. Deficiencies in the rules include that the TCEQ can exempt relocation of a facility from public participation requirements if "there is no indication that operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will cause a condition of air pollution."

◦ *Response 47F:* The commenter is referencing EPA's proposed limited approval/limited disapproval of the Texas public participation program published on November 26, 2008. EPA withdrew our proposed LA/LD on November 5, 2010, after the TCEQ adopted and submitted revised public participation rules. The July 2, 2010 public participation submittal included revised public participation procedures specific to portable facilities and relocation of portable facilities. As explained in Comment/Response 6, EPA is taking no action at this time on the public participation rules submitted on July 2, 2010, applicable to portable facilities. No changes were made to the final rule as a result of this comment.

• *Comment 47G:* Texans are not given notice of the TCEQ's actual decision and the documentation supporting that decision. Without adequate notice of an agency's proposed permitting action, subsequent participation opportunities are often meaningless. An example is Texas' notice for refinery Maintenance, Startup and Shutdown (MSS) permits. At the time of public notice, the TCEQ had not yet decided how to act on the applications, and had not yet even decided the process for determining which applications might trigger federal NSR. Yet despite this lack of information, the public notice period ran and the opportunity for public participation was closed. Clearly, this is not effective notice.

◦ *Response 47G:* This comment is no longer relevant. The commenter is referencing provisions of the previous Texas public participation rules that were the subject of EPA's proposed limited approval/limited disapproval on November 26, 2008. Under this previous version of the state public participation rules submitted to EPA for approval as part of the SIP, MSS emissions that were major modifications subject to PSD/NNSR permitting were required to follow the public participation requirements for PSD/NNSR. However, if the MSS emissions were minor, these emissions could be authorized through a minor permit amendment. Under these submitted rules, the applications for minor permit amendments were only required to go through the NORI publication so the public would not have had the opportunity to review a draft permit. The TCEQ adopted revised rules that were submitted on July 2, 2010. These rules, which are the subject of today's final action, require most minor permit amendment applications go through full public notice with both a NORI and NAPD publication. Under this current scenario, the public would have the opportunity to review a draft permit. No changes were made to the final rule as a result of this comment.

• *Comment 47H:* EPA should take the following action on the Texas SIP submittals for Public Participation: (1) Concurrently propose disapproval of Texas' current SIP submittal and disapproval, pursuant to § 7410(k)(5), of Texas' SIP approved public participation rule. Both disapprovals are necessary to start the sanctions clock and ensure that Texas complies with 40 CFR Part 51; and (2) in the alternative, concurrently propose limited approval and disapproval of Texas SIP submittal. The limited approval should require Texas to use authority under Tex. Health and Safety Code § 382.056(p) to provide 30 days notice and opportunity to comment on all draft permits; and should specify rule changes required to assure Part 51 notice for all permitting actions. Final action on the limited approval and limited disapproval should occur at the same time to ensure that the sanctions clock is started.

◦ *Response 47H:* This comment is no longer relevant. The commenter requested these actions in August 28, 2008, as remedies for perceived inadequacies in the Texas public participation provisions that were in effect at the time. Since the August 28, 2008, petition EPA has proposed limited approval/limited disapproval of the state rules in question. As a result of the proposed limited approval/limited disapproval, the TCEQ adopted revised public participation rules and submitted those for SIP review and approval on July 2, 2010. The previous version of the rules was withdrawn from our consideration and is no longer in effect. The analysis in our proposed approval of the July 2, 2010, public notice submittal and the accompanying TSD provides our rationale for full approval of the revised public participation rules as consistent with minimum federal requirements of the CAA and 40 CFR 51.160—51.166. No changes were made as a result of this comment.

Comment 48: UT Law Clinic also resubmitted comments it provided on January 26, 2009 regarding EPA's proposed limited approval/limited disapproval of the Texas Public Participation program.

Response 48: EPA disagrees that the submitted portions of the January 5, 2009 Supplement (Supplement to

Citizen Petition for Action Pursuant to the Clean Air Act Regarding Inadequacies of the Texas Sip and Federal Operating Permit Program and Failure to Enforce the Plan and State Permitting Programs) relating to public participation are relevant to the rulemaking in front of us. EPA reviewed the resubmitted 2009 petition supplement and isolated the following discrete comments relating to public participation. We are responding to each of these comments below to demonstrate that the petition supplement is no longer applicable to the July 2, 2010 public participation SIP submittal that we are approving in today's final action. Further, our responses to the following comments satisfy EPA's obligations to respond on these specific issues from the 2009 petition supplement.

- *Comment 48A:* UT Law Clinic commented that EPA's recent public participation proposal [November 26, 2008 proposed LA/LD] provides an example of the difficulty in dealing with one piece of the Texas program without a comprehensive evaluation of the entire program. UT Law Clinic noted that, while they largely agree with EPA's assessment of the public participation rules it analyzed, the proposal fails to comprehensively evaluate whether Texas' whole program meets federal public participation requirements. There are a number of Texas rules that allow sources to authorize new emissions and emission increases without meeting minimum federal public participation requirements of Part 51. 40 CFR Part 51. These include: de minimis air contaminants, permits by rule, alterations, qualified facilities and standard permits. Some of these rules, such as those regarding alterations, have already been approved into the SIP despite their suffering from the same illegalities identified by EPA in the current SIP public participation proposal. These provisions should be removed from the SIP. Others, such as those regarding de minimis emissions, have never been submitted for SIP approval, yet are currently implemented by TCEQ. A true evaluation of whether Texas public participation requirements meet federal standards necessitates a review of the public participation requirements applicable to all minor and major permitting actions.
  - *Response 48A:* This comment is not relevant to today's final rulemaking. The commenter provided these comments based on EPA's November 26, 2008, proposed limited approval/limited disapproval, which was subsequently withdrawn on November 5, 2010 after the TCEQ adopted and submitted revised public participation rules. However it is important to note that EPA can only evaluate for SIP approval those provisions that are submitted for review and approval by the state and our evaluation is limited to whether the state's submittal complies with the relevant requirements in the CAA and federal regulations. CAA 110(k)(3). The commenter is correct that there are several avenues in the Texas NSR SIP through which a permit can be modified—for minor sources and minor modifications, they are minor permit amendments, standard permits, permits by rule and permit alterations. The commenter is also correct that only a minor permit amendment application goes through public notice and comment on an individual case-by-case permit basis, if the minor modification is above either of the ''de minimis'' or ''insignificant'' thresholds or is for a change in character of emissions or release of an air contaminant not previously authorized under the permit. EPA has previously evaluated and SIP-approved the Texas Standard Permit (SP) program at 30 TAC Chapter 116, Subchapter F and the Texas Permit by Rule (PBR) program at 30 TAC Chapter 106 as consistent with minimum federal requirements, including public participation at 40 CFR 51.160–51.161, for minor NSR. The minor NSR SP and PBR SIP programs require the TCEQ to develop the base SP or PBR through a public notice and comment procedure, but the individual uses of the SP or PBR do not go through notice. We note that even though the commenter has concerns about the application of the minor NSR SP or PBR SIP programs in Texas, these provisions have not been submitted as part of the July 2, 2010 public participation package and are not before EPA for review. Therefore, the public participation provisions for the minor NSR SP and PBR SIP programs are outside the scope of today's rulemaking, as is the implementation of these two programs.[12] [13] Permit alterations have been SIP-approved at 30 TAC 116.116 as a method to streamline the permit revisions process for specified types of revisions. The permit alteration provisions at 30 TAC 116.116 were not submitted as part of the July 2, 2010 SIP submittal and therefore are outside the scope of today's rulemaking. EPA disapproved the Texas Qualified Facility program on April 14, 2010 (see 75 FR 19468). Texas revised the Qualified Facility program and resubmitted for SIP review and approval on October 5, 2010, and EPA will act on that submittal in a separate rulemaking. The Qualified Facility program was submitted separate from the public participation submittal of July 2, 2010, and is therefore outside the scope of today's rulemaking. The commenter is correct that the de minimis permitting provisions (as previously noted these are in the Texas state rules at 30 TAC 116.119) have never been submitted to EPA for review and approval into the SIP; and are therefore outside the scope of today's rulemaking. The current Texas NSR SIP requires that any increase in emissions requires a permit to construct or modify. No changes were made to the final rule as a result of this comment.

- *Comment 48B:* A thorough review of Texas' statutory and regulatory law affecting public participation is the only way to ensure that Texas actually implements a public participation program that is consistent with the Act. EPA cannot merely assume Texas will implement only those public participation provisions that are SIP approved.
  - *Response 48B:* As discussed previously, EPA's authority to review and approve revisions to SIPs is limited to the provisions that are submitted. CAA 110(k)(3). EPA reviews the TCEQ's statutory authority to ensure TCEQ has the authority to adopt, implement, and enforce the submitted provisions, be they in the form of rules, orders, control measures, etc., and that its authority has been properly exercised. TCEQ also submits a particular statutory provision for inclusion in the SIP if there is no corresponding rule, measure, or order for implementation. In this action, we thoroughly reviewed the rules submitted to us for approval as part of the SIP and their associated statutory provisions. The submitted rules stand on their own and do not require us to include the statutory provisions as part of the Texas NSR SIP. No changes were made to the final rule as a result of this comment.

- *Comment 48C:* TCEQ's mailing lists are inadequate. Texas maintains mailing lists for those persons who wish to receive mailed notice of TCEQ permitting actions. Such lists, however, are inadequate for most purposes. The public can either be placed on a mailing list to receive notice of all permitting actions for all media in a county, or it

[12] EPA SIP-approved the Texas Standard Permit process and public participation process on November 14, 2003, as adopted by the 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 the TCEQ on September 20, 2006 (see 73 FR 53716).

[13] EPA SIP-approved the Texas Permit by Rule process on November 14, 2003 (see 68 64543) as adopted by the TCEQ on August 9, 2000 and March 7, 2001.

can be placed on a mailing list for a particular permit number. TCEQ does not offer the option of being placed on a mailing list for a facility or source, which is what most members of the public would be interested in. Being placed on a list for all applications in a county results in receiving a flood of notices. Being on a list for a specific permit may deprive the public of notice of action on other permits and authorizations related to the facility or of new permits for the facility.

◦ *Response 48C:* There are no federal requirements for a permitting authority to maintain mailing lists or to provide targeted mailings with respect to either specific activities or facilities. Therefore, any mailing lists maintained by the TCEQ go beyond minimum federal requirements. However, we continue to encourage the TCEQ to listen to public feedback on the mailing list and revise the procedures and options accordingly to ensure that the mailing lists are serving the public as intended. No changes were made to the final rule as a result of this comment.

III. Final Action

After careful consideration of the comments received and the responses to each comment provided above, and under section 110 and parts C and D of the Act, EPA is approving 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 approving 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 at Paragraphs 7(a) and 7(b) of Board Order 87–09. In this final action we are also revising the table at 40 CFR 52.2270(e) to reflect these approvals.

Consistent with the analysis presented in our December 13, 2012, proposed notice and the accompanying TSD, our final action does not include 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), 39.419(e)(3), 39.420(h). These provisions remain before EPA and will be addressed in a separate rulemaking.

Additionally, our final action does not include 30 TAC Sections 116.111(a)(2)(K) and 116.116(b)(3), as submitted on October 25, 1999. These provisions were returned to the TCEQ on June 29, 2011, because they are outside the scope of the Texas SIP.

IV. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 7, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate

matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 25, 2013.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 1. In § 52.2270:

■ a. Amend the table in paragraph (c) by:

■ i. Adding a new centered heading ''Chapter 39—Public Notice'' followed by a new centered heading ''Subchapter H—Applicability and General Provisions'' followed by new entries for sections 39.402, 39.405, 39.407, 39.409, 39.411, 39.418–39.420 in numerical order; and adding a new centered heading for ''Subchapter K—Public Notice of Air Quality Applications'' followed by entries for sections 39.601–39.605.

■ ii. Immediately following the newly added entry for Section 39.605 by adding a new centered heading ''Chapter 55—Requests for Reconsideration and Contested Case Hearings; Public Comment'' followed by a new centered heading for ''Subchapter E—Public Comment and Public Meetings'' followed by new entries for sections 55.150, 55.152, 55.154, and 55.156;

■ iii. Revising the entries for sections 116.111, 116.114, 116.116, and 116.312; and removing the entry for section 116.124; and adding an entry for 116.194 in numerical order.

■ b. Amend the second table in paragraph (e) by revising the entry for ''Revisions for Prevention of Significant Deterioration and Board Orders No. 85–07, 87–09, and 88–08''.

The revisions and additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
* * *	*	*	*	* * *
		Chapter 39—Public Notice		
		Subchapter H—Applicability and General Provisions		
Section 39.402	Applicability to Air Quality Permits and Permit Amendments.	6/2/2010	1/6/2014 [Insert FR page number where document begins].	SIP includes 39.402(a)(1)–(3), and (a)(6).
Section 39.405	General Notice Provisions	6/2/2010	1/6/2014 [Insert FR page number where document begins].	SIP includes 39.405(f)(3) and (g), (h)(1)(A), (h)(2)–(h)(4), (h)(6), (h)(8)–(h)(11), (i) and (j).
Section 39.407	Mailing Lists	9/2/1999	1/6/2014 [Insert FR page number where document begins].	
Section 39.409	Deadline for Public Comment, and Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing.	6/2/2010	1/6/2014 [Insert FR page number where document begins].	
Section 39.411	Text of Public Notice	6/2/2010	1/6/2014 [Insert FR page number where document begins].	SIP includes 39.411(a), 39.411(e)(1)–(4)(A)(i) and (iii), (4)(B), (e)(5)(A), (e)(5)(B), (e)(6)–(10), (e)(11)(A)(i), (e)(11)(A)(iii), (e)(11)(A)(iv), (e)(11)(B)–(F), (e)(13), (e)(15), (f)(1)–(8), (g), and (h).
Section 39.418	Notice of Receipt of Application and Intent to Obtain Permit.	6/2/2010	1/6/2014 [Insert FR page number where document begins].	SIP includes 39.418(a), (b)(2)(A), (b)(3) and (c).
Section 39.419	Notice of Application and Preliminary Determination.	6/2/2010	1/6/2014 [Insert FR page number where document begins].	SIP includes 39.419(e) (e)(1) and (e)(2).
Section 39.420	Transmittal of the Executive Director's Response to Comments and Decision.	6/2/2010	1/6/2014 [Insert FR page number where document begins].	SIP includes 39.420(c)(1)(A)–(D)(i)(I) and (D)(i)(II), (D)(ii), (c)(2), and (d)–(e).

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
Subchapter K– Public Notice of Air Quality Applications				
Section 39.601	Applicability	6/2/2010	1/6/2014 [Insert FR page number where document begins].	
Section 39.602	Mailed Notice	6/2/2010	1/6/2014 [Insert FR page number where document begins].	
Section 39.603	Newspaper Notice	6/2/2010	1/6/2014 [Insert FR page number where document begins].	
Section 39.604	Sign-Posting	6/2/2010	1/6/2014 [Insert FR page number where document begins].	
Section 39.605	Notice to Affected Agencies	6/2/2010	1/6/2014 [Insert FR page number where document begins].	
Chapter 55—Requests for Reconsideration and Contested Case Hearings; Public Comment				
Subchapter E—Public Comment and Public Meetings				
Section 55.150	Applicability	6/14/2006	1/6/2014 [Insert FR page number where document begins].	
Section 55.152	Public Comment Period	6/2/2010	1/6/2014 [Insert FR page number where document begins].	SIP includes 55.152(a)(1), (a)(2), (a)(5), (a)(6), and (b).
Section 55.154	Public Meetings	6/2/2010	1/6/2014 [Insert FR page number where document begins].	SIP includes 55.154(a), (b), (c)(1)–(3) and (5), and (d)–(g).
Section 55.156	Public Comment Processing	6/2/2010	1/6/2014 [Insert FR page number where document begins].	SIP includes 55.156(a), (b), (c)(1), (e) and (g).
* * *	*	*	*	* *
Section 116.111	General Application	8/21/2002	1/6/2014 [Insert FR page number where document begins].	The SIP does not include paragraphs (a)(2)(K).
Section 116.114	Application Review Schedule	6/2/2010	1/6/2014 [Insert FR page number where document begins].	
Section 116.116	Changes to Facilities	9/15/2010	1/6/2014 [Insert FR page number where document begins].	The SIP does not include 116.116(b)(3) and 116.116(e).
* * *	*	*	*	* *
Section 116.194	Public Notification and Comment	6/2/2010	1/6/2014 [Insert FR page number where document begins].	
* * *	*	*	*	* *
Section 116.312	Public Notification and Comment Procedures.	9/2/1999	1/6/2014 [Insert FR page number where document begins].	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
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(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
*	*	*	*	* * *
Revisions for Prevention of Significant Deterioration and Board Orders No. 85–07, 87–09, and 88–08.	Statewide	12/11/85, 10/26/87, 9/29/88	06/4/92, 57 FR 28098	Ref 52.2299(c)(73). For Board Order 87–09, the provisions at paragraphs 7(a) and 7(b) have been replaced by EPA's SIP-approval of 30 TAC 39.411(f)(8)(A) and 39.605(1)(D). See 1/6/14 [Insert FR page number where document begins]
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[FR Doc. 2013–30229 Filed 1–3–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0564; FRL–9905–09-Region 4]

Approval and Promulgation of Implementation Plans; Florida: Non-Interference Demonstration for Removal of Federal Low-Reid Vapor Pressure Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State of Florida's August 15, 2013, State Implementation Plan (SIP) revision to the State's approved maintenance plans addressing the 1997 8-hour ozone national ambient air quality standards (NAAQS). Florida's revision provides updated modeling and demonstrates that the Southeast Florida, Tampa Bay and Jacksonville areas would continue to maintain the 1997 8-hour ozone NAAQS if the currently applicable Federal Reid Vapor Pressure (RVP) standard for gasoline of 7.8 pounds per square inch (psi) was modified to a less stringent standard of 9.0 psi for Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas Counties (hereafter also referred to as the ''Maintenance Plan Areas'') during the high-ozone season. The State included a technical demonstration with the August 15, 2013, SIP revision demonstrating that the less-stringent RVP in these Areas would not interfere with continued maintenance of the 1997 8-hour ozone NAAQS or any other applicable standard. Approval of the State's August 15, 2013, SIP revision is a prerequisite for EPA's consideration of an amendment to the regulations to remove the Maintenance Plan Areas from the list of areas that are currently subject to the Federal 7.8 psi RVP requirements. EPA has determined that Florida's August 15, 2013, SIP revision with respect to the revised modeling and associated technical demonstration, and with respect to the use of updated models, is consistent with the applicable provisions of the Clean Air Act (CAA or Act). Should EPA decide to remove the subject portions of the Maintenance Plan Areas from those areas subject to the 7.8 psi Federal RVP requirements, such action will occur in a subsequent rulemaking. Also, on November 29, 2012, Florida requested removal of the existing SIP references to the previously-implemented inspection and maintenance programs in the Maintenance Plan Areas. Based upon a noninterference demonstration provided by the State, EPA previously approved revisions to remove the emission reduction credits associated with this program from the SIP. Through this action, EPA is now removing the specific SIP references to the defunct inspection and maintenance program based upon the State's earlier demonstration of noninterference.

DATES: This rule is effective February 5, 2014.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2013–0564. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The