requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference certain sections of title 13 of the California Code of Regulations that establish standards and other requirements relating to the control of emissions of greenhouse gases from new passenger cars, light-duty trucks, and medium-duty vehicles and the related test procedures, as described in section II of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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 Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. The EPA defines EJ as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

CARB did not evaluate EJ considerations as part of its SIP submission; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

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

Dated: October 2, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2024–23270 Filed 10–10–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2021–0480; FRL–10676–02–R6]

Air Plan Approval; Texas; New Source Review Updates for Project Emissions Accounting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is supplementing a proposed approval published on March 6, 2023 (''March 2023 proposal''), for revisions to the Texas State Implementation Plan (SIP) that updates the Texas Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) permitting programs to incorporate Federal New Source Review (NSR) regulations for Project Emissions Accounting (PEA). This proposal supplements the March 2023 proposal with respect to the EPA's evaluation of the Texas SIP submittal and the anti-backsliding requirements of the Clean Air Act (CAA) sections 110(l) and 193. The EPA is providing an opportunity for public comment on this supplemental proposal. The EPA is not reopening for comment the March 2023 proposal. Comments received on the March 2023 proposal and this supplemental proposal will be addressed in a final rule.

DATES: Written comments must be received on or before November 12, 2024.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2021–0480 at *https://www.regulations.gov* or via email to *wiley.adina@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia

submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Adina Wiley, 214–665–2115, *wiley.adina@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Adina Wiley, EPA Region 6 Office, Air Permits Section, 214–665–2115, *wiley.adina@epa.gov.* We encourage the public to submit comments via *https://www.regulations.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

I. Background

On July 9, 2021, the Texas Commission on Environmental Quality (TCEQ) submitted to the EPA revisions to the Texas SIP that update the Texas PSD and NNSR programs to allow for PEA consistent with the EPA's November 24, 2020, final rule at 85 FR 74890. The July 9, 2021, submittal also included the repeal of obsolete provisions from the Texas permitting program; the EPA addressed the repeal of obsolete provisions in a separate final action on August 24, 2023, at 88 FR 57882.

In our March 2023 proposal (88 FR 13752), we provided information on how the Texas SIP revision was evaluated and found to be consistent with the Federal NSR program requirements for PEA. Comments on our March 2023 proposal were due by April 5, 2023. We received relevant adverse comments on our proposal that included, among other comments, that our proposal did not provide an air quality analysis demonstrating that the Texas SIP revision will not violate the anti-backsliding requirements of section 110(l) and section 193 of the CAA. Thus, we are providing our evaluation of the Texas SIP revision under CAA sections 110(l) and 193 in this supplemental proposal action. All comments received on our March 2023 proposal and this supplemental proposal will be addressed in the final action.

II. The EPA's Evaluation

Section 110(l) of the CAA requires that (1) each revision to a SIP must be adopted by the State after reasonable notice and public hearing, and (2) the EPA cannot approve a plan revision ''if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this Act.''

The July 9, 2021, Texas SIP submittal included evidence that the public was provided notice of the proposed SIP revisions in three newspapers on December 18, 2020: *Austin American-Statesman, Dallas Morning News,* and *Houston Chronicle.* The TCEQ published the proposed revisions and the notice of public hearing in the Texas Register on January 1, 2021, at 46 TexReg 123 and 46 TexReg 219, respectively. The EPA finds that the TCEQ submitted the July 9, 2021, SIP revision after reasonable notice and public hearing. The submittal therefore satisfies the first requirement of CAA section 110(l).

As to the second requirement of CAA section 110(l), for over 15 years, the EPA has interpreted section 110(l) as permitting approval of a SIP revision so long as ''emissions in the air are not increased,'' thereby preserving ''status quo air quality.'' [1] According to the plain meaning of the word ''interfere,'' a SIP revision satisfies section 110(l) if it does not hamper, frustrate, hinder, or impede any applicable CAA requirements.[2] EPA's 110(l) analysis is not a one-size-fits all provision and the variables that must be analyzed depend on the particular interference the SIP revision poses.[3] To demonstrate noninterference, a state may either: (1) offset any expected increases with equivalent or greater emissions reductions, thereby maintaining status quo air quality; or (2) submit an air quality analysis showing that the SIP revision will not interfere with applicable requirements.

The July 9, 2021, Texas SIP submittal argued that a project that is not permitted through major NSR (PSD and/or NNSR) would still be permitted through the Texas minor NSR program. The EPA evaluated whether the existing Texas minor NSR program requirements are an acceptable substitute measure in the event a modification uses PEA and is no longer subject to the requirements of the Texas PSD and NNSR programs. Our evaluation presented below analyzes whether the Texas minor NSR program requirements preserve the air quality status quo and benefits of the Texas NSR permit program.

In the July 9, 2021, SIP submittal, the TCEQ identified the possibility that a portion of projects that would otherwise have been subject to the Texas PSD and NNSR requirements under 30 TAC chapter 116, may instead use PEA to proceed as a minor NSR permitting action under the SIP-approved Texas minor NSR requirements. The TCEQ stated in the final preamble ''. . . the commission emphasizes that the adopted changes are not expected to significantly affect human health or ambient air quality, due to the requirements for minor NSR in Texas.'' *See* 46 TexReg 3925, June 25, 2021. The July 9, 2021, SIP submittal does not relieve the owner/operator of a source from the obligation to obtain a preconstruction permit. The owner or operator would still be responsible for obtaining a valid permit through the Texas minor NSR program.

The purpose of the NSR permitting program (PSD, NNSR, and minor NSR) is to protect human health and the environment while providing for industrial growth. Preconstruction permitting programs, including minor NSR, establish legally and practicably enforceable emission limits for the subject facilities. The Texas SIP includes several mechanisms for evaluating and authorizing minor NSR actions. Each mechanism has been separately evaluated and approved by the EPA as consistent with minor NSR requirements and protective of human health and the environment to satisfy the requirements at 40 CFR 51.160 through 51.164. Existing PSD or NNSR permitted facilities in Texas may use PEA to determine, consistent with the Federal regulations, that a project at an existing major stationary source does not qualify as a major modification and

[1] *Ky. Res. Council, Inc.* v. *EPA,* 467 F.3d 986, 991 (6th Cir. 2006); see also *Indiana* v. *EPA,* 796 F.3d 803, 806 (7th Cir. 2015); *Ala. Env't Council* v. *EPA,* 711 F.3d 1277, 1292–93 (11th Cir. 2013); *Galveston-Houston Ass'n for Smog Prevention* v. *EPA,* 289 F. App'x 745, 754 (5th Cir. 2008).

[2] Bryan A. Garner, Garner's Dictionary of Legal Usage 570 (3d ed. 2011); see also Merriam-Webster's Collegiate Dictionary 652 (11th ed. 2005) (''to interpose in a way that hinders or impedes''); Webster's New World Dictionary Third College Edition 704 (1988) (defining ''interfere with'' as ''to hinder'').

[3] *Center for Biological Diversity* v. *EPA,* 75 F.4th 174, 181 (3rd Cir. 2023).

thus is not subject to the requirements for major PSD modifications at 30 TAC section 116.160 or major NNSR modifications at 30 TAC section 116.150 or 116.151. Modifications to facilities in Texas that will be permitted via minor NSR mechanisms because of the application of PEA will still be protective of human health and the environment because these modifications are permitted via SIP-approved minor NSR mechanisms that establish legally and practicably enforceable emission limits. We briefly describe each of the Texas SIP-approved minor NSR mechanisms below.

The Texas SIP at 30 TAC section 116.110(b) requires that modifications to existing permitted facilities be addressed through an amendment to an existing permit. Permit amendments are SIP-approved at 30 TAC section 116.116(b). *See* 85 FR 64968, October 14, 2020. Permit amendments are used if the modification results in (1) a change in the method of control of emissions, (2) a change in the character of the emissions, or (3) an increase in the emission rate of any air contaminant. Applications for permit amendments are subject to the SIP-approved public notice provisions at 30 TAC chapter 39 and must satisfy the general application requirements at 30 TAC section 116.111, including the requirement at 30 TAC section 116.111(a)(2)(C) for the application of Texas best available control technology (BACT) to determine the applicable control technology requirements. Texas explains in the final preamble that ''Sources undergoing construction or modification which are not subject to PSD best available control technology (BACT) or lowest achievable emission rate (LAER) under major NSR requirements must still comply with Texas' BACT requirements in § 116.111(a)(2)(C). Every permit amendment, including non-major permit amendments, undergoes a review process to evaluate the impact of the project on human health and evaluate compliance with ambient air quality standards. Even non-major permitting projects are evaluated to ensure that they do not cause or contribute to an exceedance of the NAAQS and meet any applicable state property line standards. This evaluation may consist of both air dispersion modeling predictions and ambient monitoring data.'' *See* 46 TexReg 3925 and 3926, June 25, 2021.

The Texas SIP at 30 TAC section 116.110(d) provides that a Permit by Rule (PBR) can be used in lieu of a permit amendment. The Texas PBR program is SIP-approved at 30 TAC chapter 106.[4] The Texas PBR program is an alternative process for approving the construction of new and modified facilities or changes within facilities. Pursuant to 30 TAC sections 106.1 and106.2, the TCEQ develops a PBR applicable to certain types of facilities or changes within facilities the TCEQ has determined will not make a significant contribution of air contaminants. The PBR must satisfy the general requirements at 30 TAC section 106.4, including establishing enforceable limits on actual emissions, and the TCEQ provides for public notice and comment of the PBR through 30 TAC chapter 39.

The Texas SIP at 30 TAC section 116.615(3) provides that standard permits can be used in lieu of permit amendments. The Texas Standard Permit program is SIP-approved at 30 TAC chapter 116, subchapter F, and provides a streamlined, alternative mechanism to approve the construction of certain new and modified sources within categories which contain numerous similar sources where the TCEQ has adopted a standard permit.[5] Individual standard permits are developed by the TCEQ using a 30-day public notice and comment process as provided in 30 TAC section 116.603. Standard permits generally require the application of BACT and will also contain registration of emission requirements to limit a source's potential to emit and sufficient recordkeeping requirements to demonstrate compliance. Standard permits cannot be used by new major stationary sources or major modifications that are subject to the requirements of PSD or NNSR permitting.

The EPA finds that the argument presented by the State—specifically that a project that would not result in a significant emissions increase when considering the overall effect of the change on emissions, *i.e.,* considering both increases and decreases in emissions that result from the project as provided for with PEA—is an acceptable use of the substitute measure approach under section 110(l). The Texas minor NSR permitting program functions as a backstop to preserve the status quo air quality and protect human health and the environment in the event a modification is determined to be non-major in accordance with the revised regulations. Each of the available minor NSR options for permitting non-major modifications have been previously reviewed and approved by the EPA as protective of human health and the environment. Each minor NSR option provides for public comment on the permit and establishes enforceable emission limitations that have been demonstrated as protective of air quality. Additionally, the reliance on minor NSR in the event a project uses PEA is consistent with the intent outlined in the EPA's final rule for PEA where we explain that projects that may not be subject to major NSR modification requirements may still be subject to applicable minor NSR program permitting requirements.[6] The application of PEA in Texas is also likely to incentivize energy efficiency and/or other environmentally beneficial projects that may have been foregone because of the perceived complexity of major NSR permitting requirements.[7] [8] The EPA therefore proposes to find that the July 9, 2021, Texas SIP submittal satisfies the second requirement of CAA section 110(l) because the Texas SIP-approved minor NSR program will preserve the air quality status quo and benefits of the Texas SIP-approved NSR program.

Section 193 of the CAA, the ''General Savings Clause'', provides that control measures in effect or required to be adopted in nonattainment areas by an order, settlement agreement, or plan in effect before the 1990 CAA amendments in nonattainment areas may not be removed or modified absent a SIP revision that ensures equivalent or greater emissions reductions.

The July 9, 2021, Texas SIP revision ensures that modifications that are not subject to the requirements of major NNSR permitting because of the application of PEA must still be permitted through the SIP-approved minor NSR program. Each of these minor NSR mechanisms has been separately evaluated and approved as discussed above. The EPA therefore proposes to find that the July 9, 2021, Texas SIP submittal satisfies the

[4] The Texas Permits by Rule (PBR) program was initially SIP-approved on November 1, 2003. *See* 68 FR 64548. The EPA approved revisions to the Texas PBR program on November 10, 2014. *See* 79 FR 66626.

[5] The Texas Standard Permit Program was initially SIP-approved on November 14, 2003. *See* 68 FR 64543. The EPA has approved several revisions to the Standard Permit program since our initial program approval. The most recent EPA action was taken on February 13, 2020. *See* 85 FR 8185.

[6] *See* 85 FR 75890, 74896.

[7] *See* 85 FR 74890, 74896.

[8] *See* the Qualitative Environmental Impacts Analysis of the Final Project Emissions Accounting Rule presented on page 122 of ''EPA's Response to Comments Document on Proposed Rule: ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting''—84 FR 39244, August 9, 2019'' available at *https://www.regulations.gov/document/EPA-HQ-OAR-2022-0381-0013.*

requirements of CAA section 193 because the modification will still be subject to SIP-approved NSR program requirements, including public notice and the establishment of enforceable emission limits that have been demonstrated as protective of air quality.

III. Supplemental Proposed Action

The EPA is supplementing our March 2023 proposal addressing revisions to the Texas SIP to update the Texas PSD and NNSR permitting programs to provide for PEA consistent with Federal NSR requirements. In this supplemental proposal, we are proposing to approve the Texas SIP revisions submitted July 9, 2021, as consistent with the requirements of CAA sections 110(l) and 193. Our analysis found that the submitted revisions are consistent with the CAA and the EPA's regulations, policy and guidance for permitting SIP requirements. The EPA is proposing approval of the following revisions adopted on June 9, 2021, effective on July 1, 2021, submitted to the EPA on July 9, 2021:

- Revisions to 30 TAC section 116.12—Nonattainment and Prevention of Significant Deterioration Review Definitions,
- Revisions to 30 TAC section 116.150—New Major Source or Major Modification in Ozone Nonattainment Areas,
- Revisions to 30 TAC section 116.151—New Major Source or Major Modification in Nonattainment Area Other than Ozone, and
- Revisions to 30 TAC section 116.160—Prevention of Significant Deterioration.

The EPA is providing an opportunity for public comment on this supplemental proposal. However, we are not reopening for comment our March 2023 proposal. The EPA will address all comments received on our March 2023 proposal and on this supplemental proposal in our final action.

IV. Environmental Justice Considerations

Please see the March 6, 2023, proposal at 88 FR 13752, 13754.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in section III of this preamble, Supplemental Proposed Action. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. The EPA defines EJ as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The air agency did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an EJ analysis, as is described above in the section titled ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving EJ for communities with EJ concerns.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: September 27, 2024.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2024–23282 Filed 10–10–24; 8:45 am]

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