authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Nashville International Airport, Nashville, TN.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71:

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment:

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, effective September 15, 2013, is amended as follows:

Paragraph 6003 Designated as an Extension to a Class C Surface Area

* * * * *

ASO TN E3 Nashville, TN [New]

Nashville International Airport, TN
(Lat. 36°07′31″ N., long. 86°40′35″ W.)
Nashville VORTAC
(Lat. 36°07′62″ N., long. 86°40′95″ W.)

That airspace extending upward from the surface extending from the 5-mile radius of the Nashville International Airport to an 11.7-mile radius southeast of the airport, from the Nashville VORTAC 161° radial clockwise to the 195° radial, and to an 8.9-mile radius southwest of the airport from the 195° radial of the VORTAC clockwise to the 231° radial of the VORTAC.

Issued in College Park, Georgia, on February 4, 2014.

Eric Fox,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2014–03045 Filed 2–11–14; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2013–0542; FRL–9906–37–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review State Implementation Plan; Flexible Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve revisions to the Texas New Source Review (NSR) State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) [1] and its predecessor, the Texas Natural Resource Conservation Commission (TNRCC), on November 29, 1994; March 13, 1996; July 22, 1998; October 25, 1999; September 11, 2000; April 12, 2001; July 31, 2002, September 4, 2002; October 4, 2002; September 25, 2003; July 2, 2010; October 5, 2010; and October 21, 2013. These revisions to the Texas SIP establish the Flexible Permit Program. The flexible permit program is a minor NSR permit program which functions as an alternative to the traditional preconstruction permit program that is authorized in Title 30 of the Texas Administrative Code (30 TAC) Chapter 116, Subchapter B. The flexible permit program is intended to eliminate the need for owners or operators of participating facilities to submit an amendment application each time certain types of operational or physical changes are made at a permitted facility. EPA is proposing to conditionally approve the Flexible Permit Program as initially submitted in November 1994 and amended through the October 21, 2013, as consistent with federal requirements for minor NSR programs. Final approval of the Texas Flexible Permit Program is contingent upon TCEQ adopting and submitting to EPA an approvable SIP revision addressing the commitments made by the TCEQ in its October 21, 2013, Flexible Permits Commitment Letter. EPA is proposing this action under Section 110 and part C of the Clean Air Act (CAA or the Act).

DATES: Comments must be received on or before March 14, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2013–0542, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email:* Ms. Stephanie Kordzi at *kordzi.stephanie@epa.gov.*
- *Fax:* Ms. Stephanie Kordzi, Air Permits Section (6PD–R), at fax number 214–665–6762.
- *Mail or delivery:* Ms. Stephanie Kordzi, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2013–0542. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or email, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD–ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or

[1] On September 1, 2002, the Texas Legislature (House Bill 2912) formally changed the name of Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality.

viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. 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. Stephanie Kordzi (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. Telephone (214) 665–7520, fax (214) 665–6762, email at *kordzi.stephanie@epa.gov.*

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

Table of Contents

I. Background for Our Proposed Action

On September 23, 2009, EPA proposed to disapprove revisions to the SIP submitted by the State of Texas that relate to the Flexible Permit Program. On July 15, 2010, EPA took final action on that proposal disapproving Texas' Flexible Permit Program. 75 FR 41312. This disapproval action is the only action taken by EPA on the flexible permit program. EPA has never taken any other action to approve the flexible permit program submittals. Below is a summary of our grounds for initially disapproving the Flexible Permit Program as a Minor NSR SIP revision. We originally found that:

- It had no express regulatory prohibition clearly limiting its use to Minor NSR and had no regulatory provision clearly prohibiting the use of this submitted Program from circumventing the Major NSR SIP requirements.
- It was not an enforceable NSR program.
- It lacked requirements necessary for enforcement and assurance of compliance.
- It lacked the necessary more specialized monitoring, recordkeeping and reporting (MRR) requirements required for this type of Minor NSR program (a compliance emission cap) to ensure accountability and provide a means to determine compliance.
- The types of monitoring were not specified in the rule.
- It lacked specific, established implementation procedures for establishing the emissions cap in a Minor NSR Flexible Permit.
- It did not ensure the terms and conditions of Major NSR SIP permits are retained. Holders of Major NSR SIP permits were not prohibited from using the submitted Program's allowable based emissions cap. The Clean Air Act prohibits the use of an allowable based cap for Major NSR SIP permittees.

For a more detailed discussion of our rationale for the disapproval see 75 FR 41312 (July 15, 2010). Upon finalization of the rule several parties appealed the decision to the Fifth Circuit Court of Appeals.

In July and August of 2010 the State of Texas, Texas Oil & Gas Association, Texas Association of Manufacturers, and Business Coalition for Clean Air (BCCA) Appeal Group all filed petitions with the Fifth Circuit Court of Appeals seeking to overturn EPA's disapproval of the Flexible Permit Program. During the same time period the Environmental Defense Fund (''EDF'') and Environmental Integrity Project (''EIP'') moved for leave to intervene in support of EPA's disapproval. Their request to intervene was granted by the Court. While the challenge was pending, the state adopted a modified flexible permits regulation, but did not submit it to EPA.

On August 13, 2012, the Fifth Circuit Court of Appeals granted the petitioner's review, vacated our disapproval of the Texas Flexible Permit Program and remanded the matter back to EPA for further review. After the Court remanded the Flexible Permit Rule to EPA, the State, in a letter dated September 12, 2012, requested that we take action on the original Flexible Permit program submittal package in accordance with the ruling of the Fifth Circuit Court of Appeals. Following discussions with EPA, on September 24, 2013, Texas formally adopted and approved this SIP revision which is comprised of the original submittal that EPA took its disapproval action on as well as rule additions that EPA believes are essential to the program's approvability. On October 21, 2013, Texas formally submitted to EPA this proposed revision to the SIP. EPA is today proposing to conditionally

approve the October 21, 2013, submittal.[2]

II. Summary of State SIP Submittals for the Flexible Permit Program

The TCEQ has developed and submitted the Flexible Permit Program as a series of revisions to the Texas minor NSR Permit program. The TCEQ developed the Flexible Permit Program in 1994 and has adopted several amendments and submitted these as revisions to the Texas minor NSR SIP program since that time. As discussed in the Section I Background of this rulemaking, EPA is proposing conditional approval of the October 21, 2013, SIP revision approved by TCEQ and submitted for EPA review. The following is a brief summary of each of the SIP revisions pertaining to the Flexible Permit Program that is subject to our proposed conditional approval.

A. November 29, 1994 Submittal

On October 19, 1994, the TNRCC, predecessor to the TCEQ, adopted revisions to the Texas SIP to establish and implement the Flexible Permit Program in Texas. The TCEQ adopted the rule for Flexible Permits at 30 Texas Administrative Code (TAC) Chapter 116, Subchapter G—Flexible Permits; adding Flexible Permit Definitions at 30 TAC Chapter 116, Subchapter A, Section 116.13—Flexible Permit Definitions; and revising the Permit Application provisions at 30 TAC Chapter 116, Subchapter B, Section 116.110(a) to authorize the use of a Flexible Permit for construction of any new minor facility and minor modification of any existing facility. Note that some portions of the November 29, 1994, submittal were later repealed and replaced in the July 22, 1998, submittal.

B. March 13, 1996 Submittal

On February 14, 1996, the TNRCC adopted revisions to the Texas SIP to modify air permit application procedures and evaluation criteria to provide more operational flexibility to facilities. This submittal specifically included revisions to the definition of ''modification of existing facility'' in the General Definitions for Air Permitting at 30 TAC Section 116.10(F) to address modifications under Flexible Permits. This submittal of 30 TAC Section 116.10(F) for ''modification of existing facility'' was later repealed and replaced in the July 22, 1998, SIP submittal and is therefore not before EPA for review.

C. July 22, 1998 Submittal

On June 17, 1998, the TNRCC adopted severable revisions that included the repeal and replacement of portions of the November 29, 1994, submittal and the entirety of the March 13, 1996 submittal. Specific to Flexible Permits, the July 22, 1998, submittal included a new definition of ''modification of existing facility,'' at 30 TAC Section 116.10(9)(F); repeal of and new Flexible Permit Definitions at 30 TAC Section 116.13 and Section 116.110; and amendments to the 30 TAC Sections 116.710, 116.711, 116.714, 116.715, 116.721, 116.730, 116.740, and 116.750. The definitions in section 116.13 were non-substantive. An operations certification requirement for flexible permits was removed from 116.110. The amendments to the remaining sections added or clarified language regarding BACT, compliance with FCAA Section 112(g), or were non-substantive changes.

D. October 25, 1999 Submittal

On September 2, 1999, the TNRCC adopted revisions to the Texas SIP to implement Texas House Bill 801 to establish new procedures for public participation in environmental permitting. The TNRCC submitted these amendments as revisions to the Texas SIP in a letter dated October 25, 1999. The October 25, 1999, submittal included revisions to the Flexible Permits public participation provisions at 30 TAC Section 116.740.

E. September 11, 2000 Submittal

On August 9, 2000, the TNRCC adopted amendments to 30 TAC Chapters 101, 106, and 116 to implement the remaining requirements of Senate Bill 766 from the 76th Legislature. This included amendments to Chapter 116, Subchapter G, 30 TAC Sections 116.710, 116.715, 116.721, 116.722, and 116.750. The amendments to 30 TAC Chapters 101 and 116 implement the remaining requirements of Senate Bill 766 from the 76th Legislature. The amendments tripled emission fees for grandfathered facilities with emissions in excess of 4,000 tons per year after September 1, 2001, updated public participation requirements for the issuance of standard permits, and made nonsubstantive changes to other related provisions.

F. April 12, 2001 Submittal

On March 7, 2001, the TNRCC adopted revisions to Subchapter G, 30 TAC Sections 116.711 and 116.715. The amendments supplement the cap and trade program for the Houston/Galveston (HGA) ozone nonattainment area by clarifying that any source of emissions of nitrogen oxides (NO_X) in the HGA area that uses certain permits, including flexible permits, must obtain allowances for those emissions if the facility, or group of facilities, has a collective design capacity to emit ten tons or more of NO_X per year and is subject to an emission standard in 30 TAC Section Chapter 117 and by allowing the use of NO_X allowances to meet the correlating portion of emissions offset requirements.

G. July 31, 2002 Submittal

On May 22, 2002, the TNRCC adopted amendments to Chapter 39, Public Notice, and Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. The adopted changes concern requirements of procedures for the permitting of grandfathered facilities and an incentive program for the reduction of emissions of nitrogen oxides for certain types of facilities.

H. September 4, 2002 Submittal

On August 21, 2002, the TNRCC adopted revisions re-defining ''modification of existing facility'' from 30 TAC Section 116.10(9)(F) to 30 TAC Section 116.10(11)(F). The revisions also clarified permit renewal application content requirements and implemented new compliance history evaluation requirements for permit renewals.

I. October 4, 2002 Submittal

On September 25, 2002, the TCEQ adopted amendments to various fee rules in Chapters 101, 106, and 116 including 116.750, Flexible Permit Fee, and corresponding revisions to the SIP. The increases were established to provide sufficient funding to meet the current appropriation levels for air program activities and to meet operational funding requirements for the Title V programs of the commission.

J. September 25, 2003 Submittal

On August 20, 2003, the TCEQ adopted revisions to Subchapter G, 30 TAC Section 116.715. The revisions require emission reductions to be certified as emission reduction credits under 30 TAC Chapter 101, Subchapter H, except future internal offsets which will continue to be certified under Chapter 116.

[2] This October 21, 2013 submittal, including the Texas Order dated September 26, 2013, and the accompanying cover letter (available in the docket for this rulemaking), essentially resubmits all relevant portions of the prior Flexible Permits submittals and therefore constitutes the entire Flexible Permit Program.

K. July 2, 2010 Submittal

On June 2, 2010, the TCEQ adopted amendments to the Texas regulations concerning Public Notice at 30 TAC Chapter 39; Requests for Reconsideration and Contested Case Hearings; Public Notice at 30 TAC Chapter 55; and Control of Air Pollution by Permits for New Construction or Modification at 30 TAC Chapter 116. This particular rule package was submitted to EPA on July 2, 2010, after the EPA's final disapproval of the pending package of proposed SIP revisions before it, and is not part of the October 21, 2013, submittal, which included only the program in effect as of September 13, 2003 and select 2010 rule amendments.

The July 2, 2010 submittal included 30 TAC Sections 39.402(a)(4) and (a)(5) establishing applicability of public notice provisions for new Flexible Permits and amendments to Flexible Permits under 30 TAC Chapter 116.

On December 13, 2012, EPA proposed to approve the July 2, 2010, Public Participation SIP Revision. In doing so, EPA severed the Flexible Permit public participation provisions at 30 TAC Section 39.402(a)(4) and (a)(5). We also indicated it was our intent to address the revisions to Chapter 39 for Flexible Permits at the time we proposed action on the Flexible Permit program. On January 6, 2014, EPA finalized our approval of the July 2, 2010, Public Participation SIP revision; our final approval severed and did not address the public participation provisions at 30 TAC Sections 39.402(a)(4) and (a)(5) specific to Flexible Permits. EPA now finds it appropriate to address the July 2, 2010, submittal of 30 TAC Section 39.402(a)(4) and (a)(5) because we are addressing the entirety of the Flexible Permit program and the revisions of the associated Flexible Permits public participation provisions at 30 TAC Section 116.740.

L. October 5, 2010 Submittal

On September 15, 2010, the TCEQ adopted amendments to Section 116.10(9)(E) to change a portion of the definition for ''modification of existing facility''. Only this specific regulatory definition is being acted on in this action because it directly affects the flexible permit rule. The entire submittal package consisted of new and amended sections prepared in response to EPA's disapproval of the TCEQ rules that implemented the state's qualified facilities program. The October 5, 2010, submittal came in after the EPA's final disapproval of July 15, 2010, and is not part of the October 21, 2013, submittal, which included only the program in effect as of September 13, 2003, and select 2010 rule amendments.

M. October 21, 2013 Submittal

On September 24, 2013, the TCEQ adopted and approved for submission to EPA the Flexible Permit Program at 30 TAC Chapter 116, Subchapter G. The EPA received the formal submission on October 21, 2013. The entire SIP submittal included the flexible permit rules first adopted by the TCEQ in November 1994 in Chapter 116, Subchapter G to establish the flexible permit minor new source review program. Some of the rules were repealed and readopted in 1998, and various amendments to the rules that were adopted in 1999–2003. The package also contained revisions as adopted on December 14, 2010, which included 30 TAC Sections 116.13(3) and (5); 116.711(2)(M), and paragraphs (iv) and (vii); 116.715(c)(5)(A) & (B), 116.715(6)(A)(i) and (ii), 116.715(d), except the text ''The permit shall specify which of the monitoring options under paragraph (2)(A)–(E) of this subject shall be used to determine compliance for facilities subject to monitoring under this subsection,'' 116.715(d)(1), 116.715(f); 116.716(a), 116.716(c), 116.716(d) and 116.716(e), with repeal of earlier Sections 116.716(d) and 116.716(e).

Further, the submittal included various provisions that EPA believes are essential to its approvability. These include: Definitions for emission cap and individual emission limitation; discussion on maintaining terms, conditions, and representations of any Subchapter B permits that will be superseded by or incorporated into the flexible permit; inclusion of requirements for monitoring and calculations for demonstration of compliance with emission caps and individual emission limits; revised requirements for recordkeeping of information and data sufficient to demonstrate continuous compliance with emission caps and individual emission limits; requirements that monitoring systems used to determine compliance with pollutant emissions in terms of mass per unit of time must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation; and provisions addressing how to develop emission caps based upon application of current best available control technology at expected maximum capacity. Further, references to insignificant emission factors were removed since they are no longer allowed when calculating emission caps. And finally, new requirements for developing individual emission limitations in flexible permits were also included which require permits to identify all facilities subject to either emission caps or individual emission limits.

Table 1 below summarizes the changes that are in the SIP revision submittals. A summary of EPA's evaluation of each Section and the basis for our proposed conditional approval of the Flexible Permit Program as a minor NSR permit program is included in this rulemaking. The accompanying Technical Support Document (TSD) includes a detailed evaluation of the submittals and our rationale. The TSD may be accessed online at *www.regulations.gov,* Docket No. EPA–R06–OAR–2013–0542.

TABLE 1—SUMMARY OF EACH FLEXIBLE PERMIT SIP SUBMITTAL AFFECTED BY THIS ACTION

Title of SIP submittal	Date submitted to EPA	Date of State adoption	Regulations affected
Flexible Permits	11/29/1994	11/16/1994	Amendment to 30 TAC Section 116.110 Adoption of New 30 TAC Section 116.13 and New Subchapter G, 30 TAC Sections 116.710, 116.711, 116.714, 116.715, 116.716, 116.717, 116.718, 116.720, 116.721, 116.722, 116.730, 116.740, 116.750, and 116.760.
Qualified Facilities and Modifications to Existing Facilities.	3/13/1996	2/14/1996	Amendment of 30 TAC Section 116.10 to add new definition of ''modification of existing facility'' at (F).

TABLE 1—SUMMARY OF EACH FLEXIBLE PERMIT SIP SUBMITTAL AFFECTED BY THIS ACTION—Continued

Title of SIP submittal	Date submitted to EPA	Date of State adoption	Regulations affected
NSR Rule Amendments; section 112(g) Rule Review for Chapter 116.	7/22/1998	6/17/1998	Repeal and new 30 TAC Section 116.10(9)(F), 116.13 and 116.110(a)(3) adopted. Amendments to Subchapter G, 30 TAC Sections 116.710, 116.711, 116.714, 116.715, 116.721, 116.730, 116.740 and 116.750.
Public Participation (HB 801)	10/25/1999	9/2/1999	Amendment to Subchapter G, 30 TAC Section 116.740.
Air Permits (SB–766)—Phase II	9/11/2000	8/9/2000	Amendments to Subchapter G, 30 TAC Sections 116.710, 116.715, 116.721, 116.722, and 116.750.
Emissions Banking and Trading	4/12/2001	3/7/2001	Amendments to Subchapter G, 30 TAC Sections 116.711 and 116.715.
House Bill 3040: Shipyard Facilities and NSR Maintenance Emissions.	9/4/2002	8/21/2002	Amendment to 30 TAC Section 116.10, re-designating 30 TAC Sections 116.10(9)(F) to 116.10(11)(F). Amendments to Subchapter G, 30 TAC Sections 116.711 and 116.715.
Air Fees	10/4/2002	9/25/2002	Amendments to Subchapter G, 30 TAC Section 116.750.
Offset Certification, New Source Review Permitting Processes and Extensions for Construction.	9/25/2003	8/20/2003	Amendment to Subchapter G, 30 TAC Section 116.715
Public Notice Applicability to Air Quality Permits and Permit Amendments.	7/2/2010	6/2/2010	New Chapter 39.402(a)(4) and (a)(5) establishing applicability of the Chapter 39 public notice provisions to applications for new and amended Flexible Permits.
BACT and Qualified Facility Air Permit Program	10/5/2010	9/15/2010	Amendments to 30 TAC Section 116.10(9)(E) only in this action.
Flexible Permit Program	10/21/2013	12/14/2010	Amendments to 30 TAC Sections 116.13(3) and (5); 116.711(2)(M)(iv) & (vii); 116.715(c)(5)(A) & (B), 116.715(c)(6)(A), (c)(6)A)(i) and (ii), 116.715(d), except specific text; 116.715(f), excluding 715(f)(2)(A), 116.716(a), 116.716(c), (c)(1)(A) and (B), 116.716(c)(2), 116.716(c)(3), 116.716(c)(4), and 116.716(d)[new] and (e) and the repeal of 116.716(d).
Grandfathered Facilities	5/22/2002	.....	Withdrawal 30 TAC Sections 116.793–116.802 and 116.804–116.807, adopted May 22, 2002, except Section 116.794(11), 116.795(f) and 116.799(a), which were returned to the Commission by letter from EPA dated June 29, 2011; and Section 116.803, adopted August 21, 2002.

N. Overview of the Flexible Permit Program and Establishment of the Emission Cap

The Flexible Permit Program is a minor NSR permitting program developed to provide additional flexibility to the regulated community. As is evident in the preceding Section, the Flexible Permit program has been revised and evolved over time and various sections have been submitted to EPA for approval but then repealed and withdrawn. To provide context to our proposed conditional approval we provide the following summary of the key features of the Texas Flexible Permit Program, as it exists before us for review and as described in this preamble. Importantly, Texas has also submitted an interpretive letter, dated December 9, 2013, discussed more fully below, that gives Texas' interpretations of provisions of its submittal that, in some cases, EPA is relying on in this proposal to conditionally approve the package. For more information about the Program, please see the SIP revisions submitted by Texas, the interpretive letter, and the accompanying TSD for this proposed action, which are available in the docket for this action.

Pursuant to the submitted Flexible Permit Program, only one Flexible Permit may be issued for an account site.[3] See submitted 30 TAC Section 116.710(a)(1). Therefore, a Flexible Permit cannot cover sources at more than one account. See submitted 30 TAC Section 116.710(a)(4). A person may qualify for a Flexible Permit for construction of a new facility at the account site. 30 TAC Section 116.110(a)(3) and 30 TAC Section 116.710(a)(1). A person may qualify for a Flexible Permit for a modification of an existing facility at the account site. 30 TAC Sections 116.110(a)(3) and 116.710(a)(1). To ensure that there is no confusion when we use the term ''facility'' in regard to Texas rules, the EPA is providing the explanation given by the TCEQ regarding how TCEQ defines the term. TCEQ has explicitly defined the term ''facility'' in accordance with the definition under the Texas Health and Safety Code Section 382.003(6) and 30 TAC Section 116.10(6). The TCEQ translates EPA's term of ''emission unit'' (generally) to mean ''facility'' under their rules and provides a detailed explanation of the term in its formal comments to the EPA on the EPA's earlier proposed disapproval of the Texas Flexible

[3] ''Account'' for NSR purposes is defined at 30 TAC Section 101.1(1), second sentence, as ''any combination of sources under common ownership or control and located on one or more contiguous properties, or properties contiguous except for intervening roads, railroads, rights-of-way, waterways, or similar divisions.'' This definition is approved as part of the Texas SIP (March 30, 2005 (70 FR 16129)).

Permits Program. The comments are contained in Docket ID No. EPA–R06–OAR–2005–TX–0032 in *www.regulations.gov.* Under Major NSR, EPA uses the term ''emissions unit'' (generally) when referring to part of a ''stationary source''.

A Flexible Permit holder may make a change, through a NSR SIP case-by-case permit amendment (codified in the SIP at 30 TAC Section 116.116(b)) or a Flexible Permit amendment. See submitted 30 TAC Section 116.710(a)(2). In lieu of either of these two options, the Flexible Permit holder may qualify to make the change by obtaining coverage for a minor NSR SIP permit by rule authorization, codified in the SIP at 30 TAC Section 116.116(d).

If the holder of a Flexible Permit wishes to construct a new minor facility at the location where the permit is issued, he may qualify for a Flexible Permit amendment. See submitted 30 TAC Section 116.710(a)(3). This is analogous to the minor NSR SIP process of using a minor NSR SIP Permit by Rule or a minor NSR SIP permit, for authorization to construct a new facility on the site.

Texas already has an approved NSR SIP under Subchapter B, which defines a change to an existing facility as one that would cause a change in the method of control of emissions; a change in the character of the emissions; or an increase in the emission rate of any air contaminant. 30 TAC Section 116.116(b)(1). Such a change is required under the SIP to be authorized under a minor NSR SIP permit amendment. If the change is a decrease in allowable emissions; or any change from a representation in an application, general condition, or special condition in a permit that does not cause a change in the method of control of emissions; a change in the character of emissions; or an increase in the emission rate of any air contaminant (30 TAC Section 116.116(c)(1)), the change may be authorized without public notification requirements through a SIP-approved minor NSR permit alteration or by obtaining coverage under an existing minor NSR SIP approved permit by rule or standard permit. 30 TAC Section 116.116(b) and (d).

The submitted Program at 30 TAC Section 116.721(a) has the same first two SIP-approved definitions for a change to an existing facility: One that would cause either a change in the method of control of emissions or a change in the character of the emissions. It, however, has a different definition for the third type of change. Rather than the change being ''an increase in the emission rate,'' it is a change that is a ''significant increase in emissions.'' Submitted 30 TAC Section 116.718 defines a ''significant increase in emissions.'' First, the increase in emissions must come from a facility with a Flexible Permit and second, there is no significant increase if the increase does not exceed either the emission cap or individual emission limitation.

The submitted Flexible Permit program at 30 TAC Chapter 116, Subchapter G establishes an aggregated emission limit, based upon the application of available technology that limits emissions, as provided under the minor NSR SIP and known as best available control technology (BACT) [4] at expected maximum capacity (or a different limitation based on the emission level that would result from the application of a more stringent required emission control) for each covered facility, i.e., an emission cap is determined. The cap for a specific criteria pollutant addresses emissions from each covered facility with its individually calculated emission rates. The total sum of the covered facilities' calculated emission rates is the emission cap. In other words, the emission cap is a limit on the potential to emit (PTE).

An emission cap established in a Flexible Permit enables the holder to have more operational flexibility than would be allowed under SIP-approved minor NSR Permits, which impose unit-specific mass emission limits. See submitted 30 TAC Section 116.716. Under the submitted 30 TAC Section 116.716(a), Texas may establish an emission cap for a specific pollutant by calculating the total emissions for all of the facilities covered by a Flexible Permit, using the application of minor NSR SIP BACT at expected maximum capacity for each covered facility. Nevertheless, where the existing control for a facility is more stringent than the application of minor NSR SIP BACT, e.g., NSPS, NESHAPS, or a control strategy rule, then that level of control for that facility is used in the calculation methodologies for determining the cap. See submitted 30 TAC Section 116.715(c)(9) and (10). Alternatively, Texas will also set an individual emission limitation in the same Flexible Permit for each pollutant covered by an emission cap for the covered facilities to ensure the protection of human health and the environment as may be required by a state or federal rule. See submitted 30 TAC Section 116.716(b).

In the version of the Flexible Permit program that was the subject of the July 15, 2010, disapproval, the calculation methodologies for the cap and the individual emission limitations included allowing for inclusion of an ''Insignificant Emissions Factor'' (of up to nine percent) in the summation. However, the package submitted for EPA approval that we are acting on today revised the definition of emission cap to omit such a provision. See submitted (and revised with this action) new 30 TAC Section 116.13(3).

Under the submitted Flexible Permit Program, a pollutant's cap must be decreased if one of the facilities (defined by Texas to generally mean an ''emissions unit'') under the Flexible Permit shuts down for longer than 6 months. See submitted 30 TAC Section 116.716(f)(1), first sentence. If a new facility is brought into the Flexible Permit, the cap must be readjusted to accommodate its calculated emission rates. See submitted 30 TAC Section 116.716(f)(3). The cap must be adjusted downward for any facility covered by a Flexible Permit if that facility becomes subject to any new State or Federal regulation. See submitted 30 TAC Section 116.716(f)(4). A readjustment of the cap required by any new State or Federal regulation must be made the next time the Flexible Permit is either amended or altered. If an amendment to a Flexible Permit is not required to meet the new regulation, the permittee must submit a request for a permit alteration within sixty days of making the change, describing how compliance with the new requirement will be demonstrated. See submitted 30 TAC Section 116.716(f)(4), third sentence.

Under submitted 30 TAC Section 116.717, a Flexible Permit may include an implementation schedule for the installation of additional controls to meet an emissions cap for a pollutant. The section also provides that if a schedule to install additional controls is

[4] Texas adopted a revised NSR State rule on July 27, 1972, to add the requirement that a proposed new facility and proposed modification utilize at least best available control technology (BACT), with consideration to the technical practicability and economical reasonableness of reducing or eliminating the emissions from the facility. EPA approved the revised 603.16 into the Texas SIP, presently codified in the Texas SIP at 30 TAC Section 116.111(a)(2)(C). For more information, please see the 74 FR 48450 (September 23, 2009), concerning the Texas Qualified Facilities State Program and the General Definitions. The Texas SIP has been revised since our initial approval of 30 TAC 116.111(a)(2)(C). The Texas PSD Program at 30 TAC 116.160(c)(1)(A) incorporates the Federal PSD BACT definition at 40 CFR 52.21(b)(12). EPA approved the current Texas PSD program provision on September 15, 2010, as revised by the July 16, 2010 SIP submittal. See 75 FR 55978. Upon EPA's September 15, 2010, approval of the Texas PSD SIP submittals, both EPA and Texas interpreted the SIP BACT provision now codified in the SIP at 30 TAC Section 116.111(a)(2)(C) as being a minor NSR SIP requirement for minor NSR permits, and thus applicable to the Texas Minor NSR Flexible Permits Program.

included in the Flexible Permit and a facility subject to such a schedule is taken out of service, the emission cap contained in the Flexible Permit will be readjusted to reflect the period the unit is out of service. Unless a special provision in the Flexible Permit specifies the method of readjustment of the emission cap, the facility must obtain a permit amendment or alteration, as appropriate.

III. What action is EPA proposing?

The EPA is proposing to conditionally approve the Texas Flexible Permit Program, as submitted by Texas on October 21, 2013, and as contained in 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification. This action follows a decision made by the Fifth Circuit Court on August 3, 2012, which vacated EPA's previous disapproval and remanded it back to the EPA for further reconsideration. *Texas* v. *EPA,* 690 F.3d 670 (Fifth Cir. 2012). The present submittal includes the original SIP package dated November 29, 1994, which was addressed by the court, and certain specified revisions as submitted by TCEQ on October 21, 2013. In addition, the following regulations under Chapter 116 including 30 TAC Section 116.110(a)(3) on July 22, 1998, and the definition in 30 TAC Section 116.10(11)(F) submitted on July 22, 1998, for ''modification of existing facility'' are included as part of this package. EPA is also proposing to conditionally approve the public participation applicability provisions at 30 TAC Section 39.402(a)(4) and (a)(5) submitted on July 2, 2010.

In order to better understand how the submitted program will be implemented, EPA asked for an interpretive letter from the State detailing how certain aspects of the program will be operated. Based upon our evaluation of the submittals and further informed by the letter, EPA has concluded that the Flexible Permit Program as submitted October 21, 2013, in conjunction with the conditions included in the December 9, 2013, commitment letter, does meet the requirements of the CAA section 110(a) which requires each State to include a Minor NSR program in its SIP that meets the 40 CFR part 51 Subpart I requirements, including legally enforceable procedures for a minor NSR program.[5]

Table 2 below summarizes each regulatory citation that is affected by this action.

TABLE 2—SUMMARY OF EACH REGULATION THAT IS AFFECTED BY THIS ACTION

Section	Title	Date submitted to EPA as SIP amendment	Date adopted by State	Comments
Chapter 39: Public Notice				
Section 39.402	Applicability to Air Quality Permits and Permit Amendments.	July 2, 2010	June 2, 2010	30 TAC Section 39.402(a)(4) and 39.402(a)(5) specific to flexible permits only.
Chapter 116: Control of Air Pollution by Permits for New Construction or Modification Subchapter A: Definitions				
Section 116.10	General Definitions	03/13/1996 ...	2/14/1996	Definition of ''modification of existing facility'' at 30 TAC Section 116.10(F).
		07/22/1998 ...	6/17/1998	Definition of ''modification of existing facility'' at 30 TAC Section 116.10(9)(F).
		9/4/2002	8/21/2002	Redesignation of the Definition of ''modification of existing facility'' from 30 TAC Section 116.10(9)(F) to 116.10(11)(F).
		10/5/2010	9/15/2010	Renumbered definition (9)(E) for ''modification of existing facility''.
Section 116.13	Flexible Permit Definitions.	11/29/1994 ...	11/16/1994 ...	Initial adoption.
		7/22/1998	6/17/1998	Resubmitted 116.13 definitions for (1) emission cap-emission limit, (2) expected maximum capacity, and (3) individual emission limitation.
		10/21/2013 ...	12/14/2010 ...	• Revised definition of ''emission cap'' at 30 TAC Section 116.13(1). • Revised definition of ''individual emission limitation'' at 30 TAC Section 116.13(3) and (5). Deleted reference to ''insignificant factor'' formally found in 30 TAC Section 116.13.
Subchapter B: New Source Review Permits Division 1: Permit Application				
Section 116.110	Applicability	11/29/1994 ...	11/16/1994 ...	30 TAC Section 116.110(a) specific to flexible permits only.
		7/22/1998	6/17/1998	Revised 30 TAC Section 116.110(a)(3) applicability criteria.
Subchapter G: Flexible Permits				
Section 116.710	Applicability	11/29/1994 ...	11/16/1994 ...	Initial adoption.

[5] This submittal does not include the submitted rules for implementing Section 112(g) of the Clean Air Act that were identified and returned by the EPA to the TCEQ on June 29, 2011. This submittal also does not include those rules that were withdrawn by the TCEQ as identified in the October 21, 2013, submittal cover letter. EPA's position on section 112(g) of the CAA is that the EPA does not delegate section 112(g) requirements in our MACT delegations, nor do we approve them into the SIP. Instead, the State must certify to EPA that the state program satisfies all applicable requirements.

TABLE 2—SUMMARY OF EACH REGULATION THAT IS AFFECTED BY THIS ACTION—Continued

Section	Title	Date submitted to EPA as SIP amendment	Date adopted by State	Comments
		7/22/1998	6/17/1998	Revised 30 TAC Section 116.710 subsections (a), (b), (c), and (d)—Applicability criteria.
		9/11/2000	8/9/2000	Resubmittal 30 TAC Section 116.710.
Section 116.711	Flexible Permit Application.	11/29/1994 ...	11/16/1994 ...	Initial adoption.
		7/22/1998	6/17/1998	Revised 30 TAC Sections 116.711 (1)–(13)—Flexible permit application requirements.
		4/12/2001	3/7/2001	Resubmittal 30 TAC Section 116.711.
		9/4/2002	8/21/2002	Revised 30 TAC Sections 116.711 (8), (9), (10), and (11).
		10/21/2013 ...	12/14/2010 ...	Revised 30 TAC Section 116.711(2)(M) [introductory text], and paragraphs (iv) and (vii). It was submitted in the package as 30 TAC Section 116.711(13)(D) which requires permit applicants to provide a description of EPNs included in emission cap and 30 TAC Section 116.711(13)(E)(vii) which ensures PSD terms and conditions are retained in the flexible permit.
Section 116.714	Application Review Schedule.	11/29/1994 ...	11/16/1994 ...	Initial adoption.
		7/22/1998	6/17/1998	Revised 30 TAC Section 116.714.
Section 116.715	General and Special Conditions.	11/29/1994 ...	11/16/1994 ...	Initial adoption.
		7/22/1998	6/17/1998	Revised 30 TAC Section 116.715 subsections (a) and (c)(1)–(10)—General conditions applying to all flexible permit holders.
		9/11/2000	8/9/2000	Revised 30 TAC Section 116.715 subsections (a)–(d).
		4/12/2001	3/7/2001	Revised 30 TAC Sections 116.715(a) and (c)(3)(A), (c)(3)(B), and (c)(3)C).
		9/4/2002	8/21/2002	Revised 30 TAC Section 116.715 subsections (c)(1) and (c)(4).
		9/25/2003	8/20/2003	Revised 30 TAC Section 116.715 subsection (c)(3)(C)(9).
		10/21/2013 ...	12/14/2010 ...	• Revised 30 TAC Sections 116.715(c)(5)(A) & (B)—monitoring requirements must be specified in permits for compliance with emission caps. • Revised 30 TAC Section 116.715(c)(6)(A)(i) & (ii)—record-keeping for demonstrating emission cap and individual emission limitation calculations. • Revised 30 TAC Section 116.715(d)(1)—monitoring must demonstrate compliance based on sound science.
Section 116.716	Emission Caps and Individual Emission Limitations.	11/29/1994 ...	11/16/1994 ...	Initial adoption.
		10/21/2013 ...	12/14/2010 ...	Revised 30 TAC Sections 116.716(a), 116.716(c), 116.716(d), and 116.716(e) on establishing an emission cap and individual emission limits.
Section 116.717	Implementation Schedule for Additional Controls.	11/29/1994 ...	11/16/1994 ...	Initial adoption.
Section 116.718	Significant Emission Increase.	11/29/1994 ...	11/16/1994 ...	Initial adoption.
Section 116.720	Limitation on Physical and Operational Changes.	11/29/1994 ...	11/16/1994 ...	Initial adoption.
Section 116.721	Amendments and Alterations.	11/29/1994 ...	10/19/1994 ...	Initial adoption.
		7/22/1998	6/17/1998	Revised 30 TAC Sections 116.721(a), (b)(2), (d)(1), and (d)(2)—Amendments and alterations for flexible permits.
		9/11/2000	8/9/2000	Resubmittal 30 TAC Section 116.721.
Section 116.722	Distance Limitations ...	11/29/1994 ...	10/19/1994 ...	Initial adoption.
		9/11/2000	8/9/2000	Revised reference citation in Section.
Section 116.730	Compliance History	11/29/1994 ...	10/19/1994 ...	Initial adoption
		10/21/2013 ...	12/14/2010 ...	30 TAC Section 116.730 withdrawn.
Section 116.740	Public Notice and Comment.	11/29/1994 ...	10/19/1994 ...	Initial adoption.
		7/22/1998	6/17/1998	Revised Section.
		10/25/1999 ...	9/2/1999	Revised 30 TAC Section 116.740(a).
		10/21/2013 ...	12/14/2010 ...	• Revised resubmittal. • 30 TAC Section 116.740(b) withdrawn.
Section 116.750	Flexible Permit Fee	11/29/1994 ...	10/19/1994 ...	Initial adoption
		7/22/1998	6/17/1998	Revised 30 TAC Sections 116.750(b)–(d).
		9/11/2000	8/9/2000	Revised 30 TAC Section 116.750(d).
		10/4/2002	9/25/2002	Revised 30 TAC Section 116.750(b)–(c).

TABLE 2—SUMMARY OF EACH REGULATION THAT IS AFFECTED BY THIS ACTION—Continued

Section	Title	Date submitted to EPA as SIP amendment	Date adopted by State	Comments
		10/21/2013 ...	12/14/2010 ...	Revised resubmittal.
Section 116.760	Flexible Permit Renewal.	11/29/1994 ...	10/19/1994 ...	Initial adoption.
Section 116.765	Compliance Schedule	10/21/2013 ...	12/14/2010 ...	Submittal 30 TAC Section 116.765(b) and (c).

A. What is a conditional approval?

Section 110(k) of the Act governs EPA's actions addressing SIP submissions. Where EPA finds that a SIP submission is not fully approvable, we may choose to use a conditional approval as provided under Section 110(k)(4). In this case EPA may conditionally approve the plan based on a commitment from the State to adopt specific corrections to the Flexible Permit Program by a date certain, but no later than 1 year after the approval of the revision. Guidance on the use of conditional approvals was addressed by EPA in 1992 in a memorandum from John Calcagni.[6] This guidance was followed in the development by the TCEQ of their submittal of October 21, 2013 and was the basis for their detailed letter of commitment. A copy of TCEQ's letter of commitment and the Calcagni memo are available in the docket to this rulemaking. Upon TCEQ fully satisfying their commitment and subsequent final action by EPA, the Flexible Permit Program for the first time will become a fully approved federally enforceable requirement in the Texas State Implementation Plan. The TCEQ, in its letter of December 9, 2013, committed to adopt by November 30, 2014, certain changes to the rules contained in the SIP submittal.

Once EPA determines that all the conditions in the commitment letter have been met, EPA will publish in the **Federal Register** a determination that converts the conditional approval to a full approval and provides a copy of the Flexible Permit Program as revised to meet the conditions. However, if the State fails to submit a SIP revision reflecting its December 9, 2013, commitments by November 30, 2014, or if EPA determines that the submitted SIP revision does not address the commitments, then in accordance with 110(k)(4) of the CAA, the conditional approval converts to a disapproval action. In that case, EPA would issue a letter to the TCEQ converting the conditional approval of the Flexible Permit Program to disapproval. Because the Flexible Permit Program is a discretionary variation of the SIP approved minor program and was not submitted to address a mandatory requirement of the Act, disapproval of the program would not trigger sanctions under Section 179(b) or start a Federal Implementation Plan clock.

B. What are the commitments?

TCEQ provided a commitment letter on December 9, 2013, to EPA that provides that the commission will subsequently submit amended rules that are consistent with the rulemaking requirements of the Texas Administrative Procedure Act. This action is necessary because some of the rules were repealed and readopted in 1998, and amendments to the rules were adopted in the 1999 to 2003 timeframe. The rulemaking would also include the repeal of text adopted in 2010 but not part of the submission by the Commission on September 24, 2013. More specifically, Texas will also make rule changes to ensure that all regulatory citations in the package are labeled and referenced correctly and placed in proper sequence. Without the renumbering and referencing effort, incorrect references in the rules could result in applicable requirements being overlooked and not being incorporated into Flexible Permits during their preparation or modification. Further, the rules could cite to incorrect requirements not applying to the entities regulated through the Flexible Permit Program. The TCEQ has committed to providing a SIP submittal by November 30, 2014, that will reformat, reorganize and renumber the Flexible Permit Program into a cohesive rule that will ensure that the rules are properly structured within and according to the rulemaking requirements of the Texas Administrative Procedure Act and the Texas Administrative Code. It will also include the repeal of text adopted in 2010 that was not part of the submittal adopted by the Commission on September 24, 2013. This commitment letter is available in the docket for this rulemaking. All the necessary substantive provisions of the flexible permit program were included in the submissions and the conditions address formatting and style requirements in state law. The changes that Texas will be making will not materially alter the submitted program described in this proposal.

IV. EPA's Evaluation of the Texas Flexible Permit Program as a Minor NSR Program

The Act at Section 110(a)(2)(C) requires states to develop and submit to EPA for approval into the state SIP, preconstruction review programs applicable to new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the New Source Review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the National Ambient Air Quality Standards (NAAQS), i.e., ''attainment areas'', as well as areas where there is insufficient information to determine if the area meets the NAAQS, i.e., ''unclassifiable areas.'' The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS, i.e., ''nonattainment areas.'' The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, more than certain major source thresholds and thus do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located.

EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR 51.160–51.166. Regulations specific to minor NSR programs are contained in 40 CFR 51.160–51.164. In addition, there are several provisions in 40 CFR Part 51

[6] John Calcagni's July 1992, Memorandum, ''*Processing of State Implementation Plan (SIP) Submittals*'', to Directors.

that apply generally to all SIP revisions. The TCEQ has developed the Flexible Permit Program as a component of the Texas Minor NSR program; therefore, we evaluated the Texas Flexible Permit Program as submitted in October 21, 2013, and the commitment letter against the federal requirements for minor NSR programs. EPA's evaluation is also informed by an interpretive letter sent by TCEQ on December 9, 2013, clarifying certain aspects of the program. In an earlier **Federal Register** proposed action, EPA articulated its position on the use of interpretive letters in evaluating SIPs:

EPA believes that the use of interpretive letters to clarify perceived ambiguity in the provisions in a SIP submission is a permissible and sometimes necessary approach under the CAA. Used correctly, and with adequate documentation in the **Federal Register** and the docket for the underlying rulemaking action, reliance on interpretive letters can serve a useful purpose and still meet the enforceability concerns of the Petitioner. Regulated entities, regulators, and the public can readily ascertain the existence of interpretive letters relied upon in the EPA's approval that would be useful to resolve any perceived ambiguity. By virtue of being part of the stated basis for the EPA's approval of that provision, the interpretive letters necessarily establish the correct interpretation of any arguably ambiguous SIP provision. In addition, reliance on interpretive letters to address concerns about perceived ambiguity can often be the most efficient and timely way to resolve concerns about the correct meaning of regulatory provisions. Both air agencies and the EPA are required to follow time- and resource-intensive administrative processes in order to develop and evaluate SIP submissions. It is reasonable for the EPA to *exercise* its discretion to use interpretive letters to clarify concerns about the meaning regulatory provisions, rather than to require air agencies to reinitiate a complete administrative process merely to resolve perceived ambiguity in a provision in a SIP submission. In particular, the EPA considers this an appropriate approach where reliance on such an interpretive letter allows the air agency and the EPA to put into place SIP provisions that are necessary to meet important CAA objectives and for which unnecessary delay would be counterproductive. (78 FR 12460, 12475, February 22, 2013). Texas' interpretive letter is in the docket for this action and is discussed throughout this notice.

As we stated above, 40 CFR 51.160 establishes the enforceable procedures that all minor NSR programs must include. We will address the specific requirements for enforceability in Section A below. 40 CFR 51.161 establishes the public notice requirements for minor NSR programs. We will address the public notice requirements more fully in a following Section B. Sections 51.160–51.164 require that a SIP revision demonstrate that the adopted rules will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. We will address the specific requirements for permitting activities that ensure attainment more fully in a following Section C.

EPA notes that in response to its final disapproval on the Flexible Permits Rule on July 15, 2010, the TCEQ adopted, on December 14, 2010, revised Sections of the Texas Administrative Code which resulted in changes to Chapter 116. In recent discussions with EPA, the State agreed to submit for our consideration portions of those rules in conjunction with the prior submittal addressed in EPA's July 15, 2010, action. A discussion of the portion of the applicable December 14, 2010, rule that was included in the submittal package is also included in the section A.(1–5) below.

A. Federal Requirements for Enforceability of the Minor NSR Program

The Federal requirements for enforceability are found in 42 U.S.C. 7410(a)(2)(A) and 42 U.S.C. 7410(a)(2)(C) as interpreted by the EPA guidance discussed below. The EPA has several regulations that address all SIPs and SIP revisions. In addition to the generally applicable rules discussed below, the requirement for enforceability of a minor NSR program is found at 40 CFR 51.160. This rule specifically requires the state or local agency to have the authority to prevent the construction of a facility or modification that will cause a violation of applicable portions of the control strategy or interfere with attainment or maintenance of a NAAQS. To accomplish this goal, the state's minor NSR program must include the means by which the state agency will review proposed new construction or modification projects to determine that such projects will not interfere with the control strategy or cause a violation of a NAAQS. The minor NSR program must include the following in accordance with 40 CFR 51.160(c):

- The minor NSR program must provide for the submission, by the owner or operator of the building, facility, structure or installation to be constructed or modified, such information on the nature and amounts of emissions to be emitted by it or emitted by associated mobile sources; and the design, construction and operation of such facility, building, structure, or installation as may be necessary to allow the permitting authority to make a determination on approvability.
- The minor NSR program must provide that approval of any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.
- The minor NSR program must include procedures to identify the types and sizes of facilities, buildings, structures, or installations which will be subject to review. The minor NSR program must also discuss the basis for determining which facilities will be subject to review.
- The minor NSR program must also discuss the air quality data and the dispersion or other air quality modeling used to make approval decisions.

The Court in its Opinion stated that in disapproving the Texas Flexible Permit Program, the EPA failed to explain or tie replicability, clarity and, in general, elements of the enforcement guidance to standards provided for in the CAA. See, 690 F.3d 670, 683–4. 42 U.S.C. 7410(a)(2) provides that a SIP must include enforceable emission limitations. It is this CAA requirement that the SIP be enforceable that provides the legal basis for requiring that a program meet criteria necessary for enforceability. Enforceability is required by the Act and without it the EPA, the states, and the citizens who wish to determine whether or not a regulated entity is in compliance, and then to enjoin any violations, will find it difficult to take action to ensure compliance. Being able to enforce permits and rules adequately provides interested parties the ability to return regulated entities to compliance. The collection of penalties both penalizes the offender and provides deterrence of future violations. Without adequate enforceability, EPA cannot ensure that a program submitted to be approved into the SIP will be protective of the NAAQS. See, 42 U.S.C. 7410(l). Minor sources have the potential to impact the NAAQS. EPA acknowledged this in the 1986 rulemaking establishing the current version of 40 CFR 51.160–164 (the minor source rules). The EPA stated that ''The very fact that such [minor] sources are subject to review indicates that it would be appropriate to require that EPA be notified of permitting actions on such sources [minor] for oversight purposes. Moreover, a large number of minor sources could have a significant cumulative effect on air quality.'' See, 51 FR 40656, 40658

November 7, 1986. These sources [7] have historically included some of the largest refinery and petrochemical companies in the State. These large sources very frequently have the need for minor NSR changes to their permits. The Appendix to the TSD contains a list of companies provided by the TCEQ on December 18, 2013, that currently have or historically had coverage under a flexible permit issued prior to the rules becoming SIP approved.

In addition to ensuring protection of the NAAQS, enforceability is required by the Act and in several regulations that are applicable to minor source programs as well as to all SIPs and SIP revisions. 42 U.S.C. 7410(a)(2) provides that a SIP must include enforceable emission limitations and control measures, coupled with methods for maintaining and analyzing data on air quality. EPA's regulations implementing this provision require that: Each plan must set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in (1) A violation of applicable portions of the control strategy; or (2) Interference with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring State. In addition, 42 U.S.C. 7410(a)(2)(C) specifically provides that a program be established to provide for the enforcement of emission limitations. While the statute provides for considerably broader discretion for States to craft minor source programs, it does not in any way distinguish the requirement for enforceability between major and minor source programs. Indeed, since (as noted above), very large major sources obtain many minor source permits for construction and modification of emissions units, the collection of such permits at such sources should reflect similar levels of enforceability. Congress recognized this in establishing the Title V operating permit program, which collects all permits into a single comprehensive document, and requires the permitting authority to remedy past flaws related to permit enforceability. In addition, the following regulatory provisions lay out the framework for requirements for enforceability in SIPs, and in particular minor source programs. Certainly the statute makes no such distinction nor do the regulations. 40 CFR 51.160 provides in relevant part that each plan must set forth legally enforceable procedures that enable the State or local agency to determine whether there is violation of applicable portions of the control strategy. 40 CFR 51.281 provides, in relevant part, that emission limitations and other measures adopted by the state as rules and regulation must be enforceable by the State Agency. 40 CFR 51.212(c) provides for an enforceable test method for each emission limitation. The Court discussed only the requirements found in 40 CFR 51.160–164, relating specifically to minor source permitting as applicable in this matter. However, all SIPs and SIP revisions must also comply with some additional requirements, found in part 51 such as Subparts F, K, L and O. Thus, enforceability is a significant element in the Act and our regulations.

EPA has, from time to time, also issued guidance that provides the Agency's interpretation of what it means to be enforceable under the Act and implementing regulations.

One of the central documents that sets forth our interpretation is the September 23, 1987, Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, and Thomas L. Adams Jr., Assistant Administrator for Enforcement and Compliance Monitoring, entitled ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency.'' [8] In the memorandum, we explain that submitted rules that are clearly worded, clear as to who must comply, and explicit in their applicability to regulated sources are appropriate means for achieving the statutory enforcement requirement. Appropriate testing, recordkeeping, reporting, and monitoring provisions are necessary to establish how compliance will be determined and be sufficient to ensure that the NAAQS and PSD increments are protected. Attached to this memorandum was an implementation guidance which included a section entitled ''SIP APPROVABILITY CHECKLIST—ENFORCEABILITY'' regarding how to specifically evaluate proposed rules and ensure they are enforceable.

On November 3, 1993, EPA's John S. Seitz, Director, Office of Air Quality Planning and Standards, issued a memorandum titled ''Approaches to Creating Federally-Enforceable Emissions Limits.'' While its purpose was to give guidance as to how permitting authorities could create permit programs that would allow sources that would otherwise be major sources to be considered ''minor'' for the purposes of title V permitting and various other requirements of the Act, it also further articulates EPA's interpretation of statutes and regulations as it relates to creating emissions limits that are legally and practically enforceable. It is EPA's longstanding interpretation of 42 U.S.C. 7410(a)(2) of the CAA that in general federal enforceability has two parts: legal enforceability and practical enforceability.

A requirement is ''legally enforceable'' if some authority (as well a citizen) has the right to enforce the restriction. Practical enforceability for a source-specific permit will be achieved if the permit's provisions specify: (1) A technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); and (3) the method to determine compliance, including appropriate monitoring, recordkeeping, and reporting. For rules and general permits that apply to categories of sources, practical enforceability additionally requires that the provisions: (1) Identify the types or categories of sources that are covered by the rule; (2) where coverage is optional, provide for notice to the permitting authority of the source's election to be covered by the rule; and (3) specify the enforcement consequences relevant to the rule. ''Enforceable as a practical matter'' will be achieved if a requirement is both legally and practically enforceable.[9] The above cited guidance and **Federal Register** notices demonstrate that EPA has consistently interpreted enforceable requirements of the CAA in the manner explained above, i.e., that they must be both legally and practically enforceable. We believe the Flexible Permit program before us today meets our interpretation of enforceable under the CAA.

The provisions from the October 21, 2013 submittal needed to ensure legal and practical enforceability are discussed in numbers 1–5 below.

1. Identifying the New Facilities and/or Modifications for Inclusion in a Flexible Permit

One key feature of an enforceable minor NSR program is the ability to

[7] These sources include minor sources as well as major sources seeking minor modifications to their facilities.

[8] See 57 FR 13498, April 16, 1992. This is the General Preamble to the 1990 CCA Amendments which was meant to act as guidance for the State in making revisions to their NSR programs. It references the above memorandum as establishing the enforceability criteria for writing rules and permitting. See also Pgs, 13541, 13548.

[9] See 67 FR 80186, 80190–80191 December 31, 2002.

easily identify the facilities and modifications subject to the program. See, 40 CFR 51.160(e). For the Flexible Permit program, the establishment and identification of the facilities subject to the emission cap is crucial to proper implementation of the program. To provide for legally enforceable emission caps, the TCEQ adopted amendments to 30 TAC Section 116.711(2)(M) on December 14, 2010, and included them in the package submitted for EPA approval on October 21, 2013. The submitted package requires permit applicants provide a complete description of the facilities (with their individually defined emission point numbers) included in an emissions cap. The package also allows a permit applicant to establish an emission cap for all facilities at an account, including every facility at the account, or to establish an emission cap comprised of a designated group of facilities at the account. Section 116.716(a) allows permit applicants full flexibility to designate facilities for inclusion in an emission cap as they see fit, without restriction on the type or location of the facility, as long as it (1) complies with the definition of account and 30 TAC Section 116.716(a) as submitted; (2) provides that emission caps be established for a pollutant for all facilities at an account or a designated group of facilities at an account. Finally, 30 TAC Section 116.716(c) as submitted, includes text to ensure that the rules include procedures for establishing an emissions cap. See 35 TexReg 11936–11941.

2. Inclusion of Appropriate Monitoring and Recordkeeping Requirements in Flexible Permits

In addition to establishing the facilities and modifications subject to the minor NSR program, the SIP must require sufficient monitoring, recordkeeping, and reporting (MRR) to demonstrate that the source or modification as permitted will not result in a violation of the control strategy or an applicable NAAQS and is enforceable. One of the rationales for our original disapproval was that the program afforded excessively broad discretion to the director regarding whether or not to include MRR conditions in a Flexible Permit. See, 75 FR 41312, 413213. Subsequent to the Fifth Circuit's vacatur of our disapproval of the MRR and director's discretion provisions in the original Flexible Permit program, EPA, in a separate rulemaking action, has more clearly articulated the Agency's long standing interpretation of the CAA as it relates to the use of director discretion in SIPs.

On February 22, 2013, in a proposed action involving how excess emissions would be treated in state rules by sources during periods of startup, shutdown, or malfunction (SSM), EPA extensively discusses the use of director's discretion in SIPs. For the full discussion of this issue please see 78 FR 12460, February 22, 2013, and the accompanying SSM legal memo: ''Memorandum to Docket EPA–HQ–OAR–2012–0322 Statutory, Regulatory, and Policy Context for this Rulemaking February 4, 2013.'' In these documents EPA articulates the rationale for its longstanding interpretation that the CAA does not allow ''director's discretion'' provisions in SIPs if they provide unbounded discretion to determine what requirements apply to sources, in ways that would amount to case-specific revisions of the SIP without meeting the statutory requirements of the CAA for SIP revisions. See, 78 FR 12460, 12474.

The EPA has explained that director's discretion provisions can be acceptable if such provisions are sufficiently specific, provide for sufficient public process, and are sufficiently bounded, so that it is possible to anticipate at the time of the EPA's approval of the SIP provision how that provision will actually be applied and that the pre-authorized exercise of director's discretion will not interfere with other CAA requirements, such as providing for attainment and maintenance of the NAAQS. See, 78 FR 12460, 12485. In the EPA's judgment, the revised Flexible Permit Rule before us today is sufficiently bounded, provides for public participation, protects the NAAQS, and is enforceable.

The disapproved package had provided that a source should have provisions for measuring emissions of air contaminants ''as determined by the Executive Director,'' and imposed no additional substantive requirements for such measurements and did not prevent the Director from exempting the source from any requirements at all. Thus, it did not comport with the requirements specified in EPA's recent notice. The revised Flexible Permit Rule, as submitted in October 2013, does not contain any provision that could constitute or authorize a complete variance or an exemption from monitoring. The State in its interpretive letter clearly confirms that its rules do not allow for an exemption from monitoring requirements. The requirements for monitoring are general in nature but are sufficiently bounded to be approvable. In particular, TCEQ adopted amendments to 30 TAC Section 116.715(d)(1) to satisfy EPA concerns about the exercise of director's discretion. Section 116.715(d)(1) provides that the ''monitoring system must accurately determine all emissions of the pollutants in terms of mass per unit of time. Any monitoring system authorized for use in the permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation.'' As explained in the TCEQ interpretive letter, this monitoring condition clearly constrains the director's discretion. As such, it is consistent with the guidelines for director's discretion provisions set forth in the EPA guidance just described.

The newly submitted rule tracks very closely with the monitoring provisions set forth in EPA's major source Plantwide Applicability Limitation (PAL) provisions in the federal PSD regulations (PAL). EPA's PSD PAL provisions at 40 CFR 52.21(aa)(12) specify monitoring requirements for PAL permits and requires that all monitoring systems authorized for use in a PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation.

Moreover, in our original disapproval for the Flexible Permit Program, we cited to the PAL rule as an appropriate way to for the director to establish monitoring requirements.[10] As noted above, TCEQ also submitted an interpretive letter clarifying how this provision in the program operates and demonstrates it is consistent with EPA requirements. In sum, these provisions effectively impose necessary substantive requirements on MRR provisions.

The newly submitted Flexible Permit Program expands the MRR provisions to ensure enforceability of the program. 30 TAC Section 116.715(c)(5)(A) requires each flexible permit to specify requirements for monitoring or demonstrating compliance with emission caps and individual emission limits in the flexible permit. 30 TAC Section 116.715(c)(5)(B) requires each flexible permit to specify emission calculation methods for calculating annual and short term emissions for each pollutant. We find that these provisions of the Flexible Permit Program were included in the revised SIP submission by the TCEQ on October 21, 2013, See, 35 TexReg 11938–11939. These provisions establish that the overall program, and in particular the MRR provisions, provide for sufficient public process, and are sufficiently

[10] See, 75 FR 41312, 41317.

bounded. It is possible to anticipate how the provision will actually be applied and that the pre-authorized exercise of director's discretion will not interfere with other CAA requirements. They also ensure that the limits on director's discretion are legally enforceable. See 40 CFR 51.160 (requiring that minor source program include enforceable procedures.).

3. Additional Elements Specific to Emissions Caps

EPA has also concluded that the program, as submitted, contains other specialized provisions needed to ensure enforceability. Once the cap is established the facilities are then able to make changes without permit revisions provided the emissions are below the established emissions caps. The TCEQ has consistently defined the flexible permit program as a new type of minor NSR permit program which functions as an alternative to the traditional preconstruction permits that are authorized in Chapter 116, Subchapter B, NSR Permits. The TCEQ states that flexible permits were designed to exchange flexibility for further emission reductions without relaxation of unit specific control requirements. In its submittal, the TCEQ has included provisions in 30 TAC Section 116.715(c)(5)(A) that satisfy the requirements that each flexible permit specify requirements for monitoring or demonstrating compliance with emission caps and individual emission limits in the flexible permit; 30 TAC Section 116.715(c)(5)(B) as submitted satisfies the requirement that each flexible permit specify emission calculation methods for calculating annual and short term emissions for each pollutant; and 30 TAC Section 116.715(d)(1) to satisfy the requirements concerning accountability/enforceability. Each of these amendments to the Flexible Permit Program was submitted as a SIP revision by the TCEQ on October 21, 2013. See, 35 TexReg 11938–11939.

4. Provisions To Ensure the Flexible Permit Program Is a Minor NSR Program

Because the Flexible Permit program can be used for both true minor sources and for minor modifications at existing major sources, the program must include provisions to ensure that major NSR requirements are protected and that the Flexible Permit Program cannot be used to circumvent the requirements of either PSD or NNSR review. The TCEQ adopted provisions on December 14, 2010, to further clarify the major NSR permitting programs. The TCEQ adopted amendments to 30 TAC Section 116.711(2)(M)(vii) to specify that the flexible permit application must identify any terms, conditions, and representations in any Subchapter B permit which will be superseded by or incorporated under a flexible permit and provide an analysis of how the conditions and control requirements of a Subchapter B permit will be carried forward in the proposed flexible permit. Texas revised 30 TAC Section 116.716(c)(2) to require facilities subject to lowest achievable emission rate (LAER) in accordance with Subchapter B, be included in a separate emissions cap or provided with individual emission limitations. This provision ensures that sources subject to LAER are fully controlled as required by federal NSR regulations. Each of these amendments to the Flexible Permit Program was submitted as a SIP revision by the TCEQ on October 21, 2013. Each of these amendments to the Flexible Permit Program ensures that the program is for minor NSR actions and that for any minor amendments to a major source, the source will retain its major source requirements (i.e., cannot be used to circumvent the major source requirements). Our evaluation of this issue is also informed by the Fifth Circuit Court of Appeals decision in *Texas* v. *EPA,* 690 F3d 670, (5th Cir 2013) in which the Court overturned our disapproval of the rule. One of the major rationales of our earlier disapproval was that the Program might allow major sources to evade Major NSR. The EPA found that the Flexible Permit Program ''has no express regulatory prohibition clearly limiting its use to Minor NSR and has no regulatory provision clearly prohibiting the use of this submitted Program from circumventing the Major NSR SIP requirements.'' See, 75 FR 41312, 41,313. The Court dismissed EPA's concern and expressly ruled that this was a program limited to minor sources only. ''The Flexible Permit Program does not allow Major NSR evasion because it affirmatively requires compliance with Major NSR''. *Texas* v. *EPA,* 690 F3d 670, 678. TCEQ included, as part of their October 21, 2013, submittal 30 TAC Sections 116.711(8)&(9) which require compliance with PSD and Nonattainment review if it is found that those provisions apply.

5. Provisions To Ensure the Flexible Permit Program Demonstrates Compliance

An emissions cap program such as the Flexible Permit Program must include provisions for calculating compliance on a 12-month rolling average and against applicable short term limits in order to meet the requirement of Section 302(k) of the CAA that the source be able to demonstrate continuous compliance. Appropriate emission calculations will ensure that permit conditions are protective of the control strategy and the applicable NAAQS. To provide for this, the TCEQ submitted amendments to the Flexible Permit Program on October 21, 2013, to 30 TAC Section 116.715(c)(5) to address monitoring, calculations, and equivalency of methods so that each flexible permit shall specify requirements for monitoring or demonstrating compliance with emission caps and individual emission limits in the flexible permit and revised 30 TAC Section 116.715(c)(6)(A)(i) so that emission caps and individual emission limitation calculations are based on a 12-month rolling average and emission caps and individual emission limitation calculations correspond to any short term emission limitations.

B. Federal Requirements for Public Notice of Minor NSR Permitting

The requirements for public notice of minor NSR permitting are outlined at 40 CFR 51.160 and 51.161. The legally enforceable approval procedures for Minor NSR programs at 40 CFR 51.160 must require the permitting authority to provide opportunity for public comment on information submitted by sources and the agency's analysis of the effects of the proposed source on ambient air, including its proposed approval or disapproval. See, 40 CFR 51.161(a). The opportunity for public comment must include, at a minimum, a 30-day comment period on the information submitted by the applicant and the permitting authority's analysis of the effect of the proposed application on air quality. This information must be noticed by prominent advertisement in the area affected by the proposed source and available for public inspection in at least one location in the area affected. See, 40 CFR 51.161(b).

1. Overview of the Texas Public Participation Process for Applications for New Flexible Permits and Flexible Permit Amendments

The Texas public participation process covers the variety of air quality permit applications processed by the TCEQ including applications for permits for new major sources or modifications subject to PSD or NNSR requirements and minor NSR permit actions such as Flexible Permits. EPA has separately reviewed and approved the public participation process for major sources and modifications subject to PSD/NNSR requirements, PAL permit

authorizations at existing major sources, new minor sources or minor amendments, and permit renewals. See our final rule dated January 6, 2014, approving the Texas public participation requirements for these permit actions as consistent with the requirements of the CAA and 40 CFR 51.160–51.166. See 79 FR 551. In today's action we are only reviewing the Texas public participation program specific to applications for new and amended Flexible Permits pursuant to Chapter 116, Subchapter G. The public participation requirements for Flexible Permits are found at 30 TAC Section 116.740, which requires any applicant for a new Flexible Permit or amendment to a Flexible Permit to comply with the requirements established in Chapter 39 related to Public Notice. Among other Sections that apply to both flexible permit applications and other applications, Chapter 39 separately applies the public participation process to applications for new Flexible Permits at 30 TAC Section 39.402(a)(4) and applications for amendments to a Flexible Permit at 30 TAC Section 39.402(a)(5). Because the Flexible Permits program is a minor NSR authorization, our evaluation of the public participation specific to flexible permits will be based on minor NSR public participation requirements of 40 CFR 51.161.

The following process is used to publish notice of an application for a new Flexible Permit or an amendment to a Flexible Permit.:

1. Applicant submits air quality permit application for new or amended Flexible Permit to TCEQ. See 30 TAC Section 116.711.

2. TCEQ reviews the application and determines whether the application is administratively complete. During this process, the TCEQ has 90 days to determine the application is complete or request additional information. See 30 TAC 116.714, which cross-references the requirements at30 TAC Section 116.114(a)(1).

3. Once the application is administratively complete, the applicant is required to publish the first notice, the Notice of Receipt of Application and Intent to Obtain Permit (NORI), as applicable. See 30 TAC Section 39.418. The NORI is a unique feature of the Texas Public Notice Process. The NORI provides information to the public about the receipt of an application and provides basic information about the proposed new source or modification such as a description of the location and the nature of the proposed activity, a description of the public comment process, and the location where materials will be made available for review. The NORI does not provide any technical information, but rather serves as an indicator of future public notices and actions that may be of interest, enabling the public to anticipate draft permits. The NORI is required for all new applications for Flexible Permits at 30 TAC Section 39.402(a)(4) and most applications for amendments to Flexible Permits at 30 TAC 39.402(a)(5). Note that certain applications for Flexible Permit amendments are exempted from the Chapter 39 public notice provisions as discussed in this proposed action at Section IV.B.3.

4. TCEQ completes the technical review and makes a preliminary decision. The TCEQ has 180 days from the date a new Flexible Permit application is administratively complete, or 150 days from the date a Flexible Permit amendment application is administratively complete, to conduct the technical review and make a preliminary decision. See 30 TAC 116.714, which cross-references the requirements at 30 TAC Section 116.114(a)(2).

5. The applicant is required to publish the second notice, the Notice of Application and Preliminary Decision (NAPD) when notified by TCEQ of the preliminary decision. See 30 TAC Section 39.419. The NAPD notice provides the information and notice to the public consistent with federal requirements. The NAPD provides details about the preliminary decision and draft permit and the location where applicable air quality analyses and other technical materials will be made available for public review. NAPD is required for all air quality permit applications for new Flexible Permits and most Flexible Permit applications subject to the Chapter 39 public notice provisions. Note that certain applications for Flexible Permit amendments are exempted from the Chapter 39 public notice provisions as discussed in Section V.A.3. of the TSD accompanying this proposed action at section IV.B.3.

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

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

8. A public meeting is held if the ED determines there is a substantial or significant degree of public interest; if the meeting is requested by a member of the legislature representing the general area of the proposed facility/modification; if a public meeting is otherwise required by law. See 30 TAC Section 55.154(c).

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

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

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

12. The ED will take final action on the permit application within 150 days of receipt of a Flexible Permit amendment application or 180 days for a new Flexible Permit application. The TCEQ's one-year clock is based on the completion of the technical review and the publication of the NAPD as provided in Step 5. See 30 TAC 116.714, which cross-references the requirements at 30 TAC Section 116.114(c)(3).

2. Analysis of the Submitted Public Participation Rules for Flexible Permits as Minor NSR Requirements

The Texas public participation requirements for Flexible Permit applications are outlined at 30 TAC Section 39.402 and apply to the following types of permits.

- New flexible permits under Chapter 116, Subchapter G—30 TAC Section 39.402(a)(4).
- Amendments to flexible permits under Chapter 116, Subchapter G when the amendment involves:

(a) A change in character of emissions or release of an air contaminant not previously authorized under the permit (i.e., change in control method or an increase in emission rate)—30 TAC Section 39.402(a)(5)(A);

(b) The total emissions increase from all facilities to be authorized under the amended Flexible Permit at a facility not affected by THSC, section 382.020,[11] exceeds the State's established ''de minimis'' levels—30 TAC Section 39.402(a)(5)(B);

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

[11] THSC, § 382.020 establishes emission control requirements for selected agricultural facilities such as cotton gins, corn mills, grain elevators, peanut processing, or rice drying facilities.

found in 30 TAC Section 39.402(a)(5)(C); or

(d) Other minor amendments to Flexible Permits where the Executive Director determines reasonable likelihood for interest or impact—30 TAC Section 39.402(a)(5)(D)(i)–(iv).

Despite the thresholds established in 30 TAC Sections 39.402(a)(5)(B) and (C), the TCEQ rules at 30 TAC Section 39.402(a)(5)(D) vest the TCEQ Executive Director with the authority to require public notice for an otherwise exempt Flexible Permit amendment if there is (1) reasonable likelihood of significant public interest in the activity, (2) reasonable likelihood for emissions impact at a nearby receptor, (3) reasonable likelihood of high nuisance potential from the operation of the facility, or (4) the application involves a facility in the lowest classification under Texas Water Code, Sections 5.753 and 5.754 and the Compliance History Rules at 30 TAC Chapter 60. This type of Director's Discretion is appropriate for a minor source program because the exercise of that discretion is bounded by the four criteria identified above, and because the discretion allows the director to increase requirements rather than to authorize exceptions to those requirements. See 78 FR at 12585–86 and the discussion above at IV, A, 2.

The notice requirements for each type of Flexible Permit application listed above are generally the same, meaning that an application for a new Flexible Permit and an application to amend a Flexible Permit will have the same public notice requirements. The submitted Texas rules generally provide that all applications for new Flexible Permits and applications for qualifying Flexible Permit amendments will go through public notice using the Texas NORI and NAPD notices. Therefore, the public will receive notice of the application and have the opportunity to comment on the draft permit and accompanying technical information. Note that the applicant is legally responsible for the publication of the NORI and NAPD, using the specific notice text provided through regulations by the TCEQ. The applicant is also legally responsible for providing copies of the public notice documents to the EPA Regional Office, local air pollution control agencies with jurisdiction in the county, and air pollution control agencies of nearby states that may be impacted by the proposed new source or modification. The NORI and NAPD both identify locations where materials, including the draft permit and all technical materials supporting the decision, will be made available for public review. The TCEQ will respond to each comment received when making a final permit decision. The TCEQ will also provide opportunity for a public meeting on the permit application if requested. On January 6, 2014, the EPA approved the Texas Public Participation rule, which includes the general notice requirements of the NORI and NAPD as consistent with federal requirements at 40 CFR 51.160 and 51.161. See 79 FR 551. See docket EPA–R06–OAR–2010–0612 in *www. regulations.gov.* EPA views the public participation applicability provisions at 30 TAC Sections 39.402(a)(4) and (a)(5) as integral to the functionality and implementation of the Texas Flexible Permits Program. As such, it is inappropriate to give full approval for these public participation provisions that apply to the Texas Flexible Permits Program until the underlying program is fully approved. Additionally, fully approving these public participation provisions without full approval of the underlying Flexible Permits Program may create confusion for the public and the regulated community. Therefore, we propose to find it appropriate to conditionally approve the notice provisions consistent with our actions on the underlying Flexible Permits Program. In today's notice we are proposing to conditionally approve the applicability requirements at 30 TAC Sections 39.402(a)(4) and (a)(5) that require an applicant to follow the NORI and NAPD processes for applications for new and amended Flexible Permits.

3. Minor NSR Public Notice Requirements Specific to Two Types of Minor NSR Flexible Permit Amendment Applications

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

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

- Thresholds are only used for Flexible Permit amendment applications. Applications for new Minor NSR Flexible Permits are required by these submitted rules to go through the public procedures of the NORI and NAPD. The applications for amendments to Flexible Permits are further divided based on the amount of emission increases at issue and whether the facility is affected by THSC section 382.020.
- THSC section 382.020 applies to agricultural facilities such as corn mill, cotton gin, feed mill, grain elevator, peanut processing facility or rice drying facility.
  - 30 TAC Section 39.402(a)(5)(B) provides that if the application for the amendment of a Flexible Permit is not for an affected agricultural facility then the public notice provided through the NORI and NAPD apply, unless the total emissions increase from all facilities authorized in the Flexible Permit amendment does not exceed any of the following levels established by the State as ''de minimis'' levels:
    - 50 tons per year (TPY) carbon monoxide (CO)
    - 10 TPY sulfur dioxide (SO_2)
    - 0.6 TPY lead (Pb)
    - 5 TPY of NO_X, volatile organic compounds (VOC), particulate matter (PM), or any other contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.
  - 30 TAC Section 39.402(a)(5)(C) provides that if the amendment for a Flexible Permit is for an affected agricultural facility, then the public notice requirements of the NORI and NAPD apply, unless the total emissions increase from all authorized facilities in the Flexible Permit amendment does not exceed any of the following thresholds established by the State as ''insignificant'' thresholds:
    - 250 TPY CO or NO_X
    - 25 TPY of VOC, SO_2, PM or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.
    - A new major stationary source or major modification threshold as defined in 30 TAC Section 116.12 of this title
    - A new major stationary source or major modification threshold, as defined in 40 CFR 52.21 under the PSD requirements
- If the Flexible Permit amendment application includes proposed emissions increases of any air contaminant above the identified threshold then the amendment application is required to go through notice pursuant to Chapter 39 requirements. That means the Flexible Permit amendment application will go through the NORI and NAPD publication process.

ii. Discussion of the ''De minimis'' and ''Insignificant'' Thresholds for Minor NSR Flexible Permit Amendments

The thresholds established by the State as ''de minimis'' thresholds at 30

TAC Section 39.402(a)(5)(B) apply to all minor NSR Flexible Permit amendment applications, except those for affected agricultural facilities. The thresholds selected by the State at 30 TAC Section 39.402(a)(5)(C), and called ''insignificant'' thresholds, apply only to minor NSR Flexible Permit amendment applications for affected agricultural facilities.

Within the scope of the Texas Minor NSR program, the ''de minimis'' and ''insignificant'' thresholds distinguish those minor Flexible Permit amendment applications that require full review from those that may not. But, the thresholds do not affect any part of the technical review of these minor NSR Flexible Permit amendment applications or the requirement to comply with other requirements such as application of required control technology, reporting when required to the emissions inventory, and analysis of monitoring data. Additionally, being below the ''de minimis'' or ''insignificant'' threshold does not override any notice or technical requirements for PSD, NNSR or new Minor NSR Flexible Permit applications.

In our January 6, 2014, final rulemaking approving Texas public participation, we found that TCEQ provided an adequate demonstration to show that their selected ''de minimis'' and ''insignificant'' thresholds for Minor NSR permitting are adequate to meet federal requirements for Minor NSR. See 79 FR 551. The State's demonstration is also applicable to the thresholds as they apply to minor amendments to existing Flexible Permits. TCEQ also provided supplemental information concerning the Flexible Permit holders' use of these thresholds since they were adopted by the State.[12] [13] The supplemental data are also included in the docket for this rulemaking. Our analysis of this supplemental information demonstrates that from Fiscal Year 1994 through Fiscal Year 2013, the TCEQ issued only one Flexible Permit to a facility that would be classified as an agricultural facility under THSC 382.020. This agricultural facility never applied for a flexible permit amendment and has subsequently gone through the de-flex process. Consequently, there are no existing Flexible Permits for affected agricultural sources; therefore the ''insignificant'' thresholds are not available for use for any current flexible permit holders. Additionally, this supplemental information demonstrates that prior to Texas Fiscal Year 2002, flexible permit amendments issued to non-agricultural facilities did not go through public notice. Fiscal Year 2002 represents the time period where TCEQ adopted and implemented the ''de minimis'' and ''insignificant'' thresholds. Since the time of adoption and implementation at the state level of the ''de minimis'' and ''insignificant'' thresholds in Fiscal Year 2002, the TCEQ records indicate that 326 amendments to flexible permits have been issued. Of the 326 applications for amendments to Flexible Permits, 135 applications have been required to go through notice due to the application of the thresholds. Our analysis of this supplemental information leads us to conclude that the application of the ''de minimis'' and ''insignificant'' thresholds specific to applications for Flexible Permit amendments increases the opportunity for public notice and participation in Texas. In the TSD for this rulemaking, we have included EPA's full analysis of the State's rationale for these thresholds and a discussion of the supplemental data provided by TCEQ. We propose to find this demonstration meets 40 CFR 51.160 and 51.161.

4. How do the Texas public notice provisions for applications for new and amended flexible permits address the concerns identified in EPA's November 26, 2008 proposed limited approval/limited disapproval for Texas public participation?

On November 26, 2008, EPA identified two deficiencies in the Texas public participation rules specific to applications for new Flexible Permits and amendments to Flexible Permits. See 73 FR 72001, at 72008. Below we reiterate the deficiencies and discuss how the revised Texas public participation process for applications for new Flexible Permits and amendments to Flexible Permits addresses our concerns.

- For initial issuance of a flexible permit to establish a minor NSR applicability cap or an increase in a flexible permit cap, the rules do not require 30-day notice and comment on information submitted by the owner or operator and the agency's analysis of the effect of the permit on ambient air quality, including the agency's proposed approval or disapproval as required by 40 CFR 51.161.

The public participation requirements specific to applications for new Flexible Permits and amendments to Flexible Permits at 30 TAC Sections 39.402(a)(4) and (a)(5) address the deficiency identified on November 26, 2008. All applications for new Flexible Permits are required at 30 TAC Section 39.402(a)(4) to go through public notice as specified in Chapter 39; which means that all applications for new Flexible Permits must publish the NORI pursuant to 30 TAC Section 39.418 and the NAPD pursuant to 30 TAC Section 39.419. The public notice process for a new Flexible Permit will run through two different publication dates. The first public notice announces the company has applied to the TCEQ for a flexible permit. This date is initially published first using the NORI. The second public notice announces the release of the draft permit. The entire public notice period runs through the end of the second 30-day comment period on the draft permit. The date may be extended through the date of any public meeting that was scheduled wherein the public can review TCEQ's analysis and preliminary determination. All applications for amendments to Flexible Permits are required at 30 TAC Section 39.402(a)(5) to go through public notice as specified in Chapter 39 using the NORI and NAPD process if the amendment will exceed the ''de minimis'' or ''insignificant'' thresholds.

- Where PSD and NNSR terms and conditions are modified or eliminated when the permit is incorporated into a flexible permit, the rules do not require public participation consistent with 40 CFR 51.161 and 51.166(q).

As explained in Section IV.A.4 of this proposed rulemaking, the TCEQ adopted amendments to 30 TAC Section 116.711(2)(M)(vii) to specify that the flexible permit application must identify any terms, conditions, and representations in any Subchapter B permit which will be superseded by or incorporated under a flexible permit and provide an analysis of how the conditions and control requirements of a Subchapter B permit will be carried forward in the proposed flexible permit. This amendment to the Flexible Permit Program was submitted as a SIP revision by the TCEQ on October 21, 2013, and will ensure that the Flexible Permit Program is for minor NSR actions only and will not circumvent the major source requirements.

Section 30 TAC Section 39.402(a)(4) provides that an application for a new flexible permit must go through Chapter 39 public notice. Therefore, where a new flexible permit application will supersede or incorporate any term, condition, and/or representation of a Subchapter B permit, this information will be available for review and

[12] Email from Janis Hudson, TCEQ to Adina Wiley, EPA titled ''Flexible Permit Amendment Applications'' dated September 11, 2013.

[13] Email from Janis Hudson, TCEQ to Adina Wiley, EPA, titled ''Flexible Permit Amendment Applications—Clarification'' dated October 23, 2013.

comment during the required NORI and NAPD publication for an application for a new flexible permit. Similarly, 30 TAC Section 39.402(a)(5)(A)–(C) requires that an application for an amendment to a flexible permit application must go through Chapter 39 public notice if the amendment is for an air contaminant not previously authorized or the amendment exceeds the identified ''de minimis'' or ''insignificant'' thresholds. The TCEQ Executive Director also has the discretion under 30 TAC Section 39.402(a)(5)(D) to require notice for an application for a Flexible Permit amendment that would not otherwise be required to provide notice.

5. Proposed Findings Specific to the Texas Public Participation Provisions for the Flexible Permit Program

EPA proposes to find that TCEQ's public participation program requirements specific to applications for new Flexible Permits and applications for amendments to Flexible Permits at 30 TAC Sections 39.402(a)(4) and (5) satisfy the provisions of 40 CFR 51.160(e) and 51.161. Moreover, we also propose to find that the TCEQ revised rules for discretionary public notice for new Flexible Permits and applications for amendments to Flexible Permits are approvable, because the provisions adequately confine Executive Director discretion by authorizing the use of discretion under specified criteria that are consistent with the goals and purposes of the Act to provide an adequate opportunity for informed public participation. EPA is proposing to find that the submitted Texas public participation regulations identifying the applicant as the legally responsible party also meet the requirements to provide opportunity for public comment and for information availability at 40 CFR 51.161, because the NORI and NAPD both identify locations where materials, including the draft permit and all technical materials supporting the decision will be made available for public review and the required information is submitted to EPA.

Finally, as explained above, we propose to find that the submitted provisions address all deficiencies specific to public notice for Flexible Permits that we previously cited in our November 26, 2008, proposed limited approval/limited disapproval of Texas public notice requirements. However, EPA views the public participation applicability provisions at 30 TAC Sections 39.402(a)(4) and (a)(5) as integral to the functionality and implementation of the Texas Flexible Permits Program. As such, it is inappropriate to give full approval for these public participation provisions that apply to the Texas Flexible Permits Program until the underlying program is fully approved. Additionally, fully approving these public participation provisions without full approval of the underlying Flexible Permits Program may create confusion for the public and the regulated community. Therefore, we propose to find it appropriate to conditionally approve the notice provisions consistent with our actions on the underlying Flexible Permits Program. Accordingly, we propose conditional approval of the Texas public notice provisions at 30 TAC Sections 39.402(a)(4) and (a)(5) for applications for new Flexible Permits and applications for amendments to Flexible Permits as submitted on July 2, 2010. Additionally, we propose conditional approval of the public participation requirement in the Flexible Permit Program at 30 TAC Section 116.740 as initially submitted on November 29, 1994; and further revised on July 22, 1998; October 25, 1999; and October 21, 2013.

C. Does proposed approval of the Texas Flexible Permit Program interfere with attainment, reasonable further progress, or any other applicable requirement of the Act?

Under Section 110(l) of the CAA, the regulations submitted as a SIP revision adopting and implementing the Texas Flexible Permit Program must meet the procedural requirements of Section 110(l) by demonstrating that the State followed all necessary procedural requirements such as providing reasonable notice and public hearing of the SIP revision. Additionally, the SIP revision must demonstrate that the adopted rules will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. We propose to find that the TCEQ satisfied all requirements pursuant to Section 110(l). See Section IV.A. of the accompanying TSD developed in support of this action including the sections *Administrative Materials* (2.1) and *Technical Support* (2.2).

The regulation of minor sources is a requirement of the CAA and EPA's regulations at 40 CFR 51.160–51.164. As discussed in this proposed action and in the accompanying TSD, EPA proposes that the Flexible Permit Program as submitted October 21, 2013, satisfies the minimum requirements for minor NSR programs, including adequate provisions for enforceability and public participation to ensure protection of the control strategy and any applicable NAAQS. The Flexible Permit Program also contains sufficient safeguards to prevent circumvention of major NSR permitting requirements. Therefore, we propose that the Flexible Permit Program is protective of the NAAQS and applicable control strategy requirements and satisfies the requirements of 110(l) of the Act.

D. TCEQ's Interpretive Letter

Below are excerpts from the December 9, 2013, interpretive letter (letter) provided by the TCEQ. This letter was requested by EPA to clarify perceived ambiguity in certain provisions in the SIP submission and to also describe how the program will be implemented. The full text of the letter can be found in the Docket for this action. We believe this letter clarifies the following aspects of the Flexible Permit Program and supports our determination that the Submittal is conditionally approvable.

- EPA asked for clarification on how director discretion is used in the rule in establishing monitoring and recordkeeping. The letter states that director discretion does not act as a variance to the monitoring and recordkeeping requirements. Texas asserts in its letter that ''TCEQ does not allow an exemption or waiver from these statutory and regulatory monitoring and recordkeeping requirements.'' They further assert that the ''monitoring condition is bounded by the requirement to be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. The sampling methods and procedures are those generally recognized in the field of air pollution or new methods or procedures with demonstrated scientific applicability.'' Whatever the requirements the Executive Director imposes, permit holders must maintain information ''sufficient to demonstrate continuous compliance'' with the emission caps and individual limits. 30 TAC Section 116.715(c)(6). We agree with TCEQ that this ensures the Program's enforceability and conclude that the information in the letter supports our proposed conditional approval.
- EPA asked for clarification regarding how pollution control equipment should be maintained and operated during startup/shutdown. The State explained in its letter that the process works as follows: ''The Flexible Permit Program (FPP) requires controls to be operated during normal facility operation. This rule may be construed to require operation of emission controls only during routine facility operations, potentially exempting sources during

startups or shutdowns (not malfunctions), but that is accurate only to the extent that the permit only authorizes routine operations. Emission limits for startups and shutdowns, appropriately modeled during permit development, may be authorized and be subject to a separate emissions cap in the flexible permit. The TCEQ does not authorize malfunctions, and therefore those emissions are not subject to any use of control equipment, although the control equipment must be used where feasible, to minimize emissions where possible during periods of unauthorized emissions. Excess emissions that occur during unauthorized startups, shutdowns or malfunctions are not excused by the FPP.'' We agree with TCEQ that this interpretation of their rule adequately addresses startups, shutdowns, and malfunctions and conclude that the information in the letter supports our proposed conditional approval. EPA asked for clarification on how the Texas SIP approved alternative permitting mechanisms may be used to alter a flexible permit. Also we wanted to understand in detail that any such changes, using alternative permit mechanisms (Standard permits or Permits by Rule (PBR)), would not be allowed if they violate the terms of an existing flexible permit. For example, if the flexible permit contains a 100 tpy cap then a facility (see Section II.M. regarding an explanation of how TCEQ defines ''facility'') should not be able to use a PBR to get authorization to increase emissions by 10 tons without amending the flexible permit. The State responded, in part, that ''Either of these authorizations may be used for facilities that are subject to a flexible permit cap, but the Standard Permit or PBR limits must be contained within the flexible permit cap, and cannot be used to relax or minimize any existing permit condition (such as recordkeeping, monitoring, reporting, testing, BACT, etc.). If one of these authorizations was allowed without being part of the emissions subject to the cap, such an approach would circumvent the basis used to establish the flexible permit, and could potentially affect the control technology, monitoring and testing requirements that were used to establish the emission cap.'' In addition, Texas explained that ''standard permits and PBRs cannot be used to alter compliance obligations in a flexible permit. Further, if more than one state or federal rule or regulation or permit conditions are applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated''. We agree with TCEQ that this clarification about how alternative permitting mechanisms may be used to alter a flexible permit resolves our concern and conclude that the information in the letter supports our proposed conditional approval. EPA asked for clarification on the relationship between an issued permit and the permit application. Specifically, do the Texas rules require the permit application be updated with the permit terms so there is never a situation where compliance with the permit application would not be the same as compliance with the permit? In response Texas stated, ''The permit application, and all the representations in it, is part of the permit when it is issued and as such is enforceable. If more than one state or federal rule or regulation or flexible permit condition are applicable, then the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated. The permit application is not updated after permit issuance except as necessary to demonstrate that the facilities can comply with the performance specified in the permit.'' In addition, Texas stated, ''As is the case with all TCEQ air quality permits, the permit application, which is part of the issued permit, continues to be read together with any permit changes made via an alteration or amendment.'' We agree with TCEQ that this clarification about the relationship between an issued permit and the permit application resolves our concern and conclude that the information in the letter supports our proposed conditional approval.

- EPA asked for clarification on how the State uses BACT to create the emissions cap. We specifically requested an interpretation on how BACT will be established and implemented for facilities (see discussion on TCEQ's definition of ''facility'') constructed prior to 1972 (commonly referred to as grandfathered facilities); facilities constructed after 1971 that will be under an emissions cap; and facilities that are subject to PSD permit requirements. In relevant part, Texas stated that with regard to grandfathered facilities, there are no longer any grandfathered facilities, for state permitting purposes, in Texas. At the time the Texas Clean Air Act (TCAA) was amended in 2001 to require these facilities to be permitted (or shut down), each had to install BACT that was at least ten years old. For facilities constructed after 1971, the TCEQ's NSR permit rules require new or modified major or minor sources meet BACT regardless of whether there is or will be a cap in a minor NSR permit. The cap is established using a current BACT analysis, and, although minor sources may not have to add controls, removal of existing controls (which would be backsliding under the SIP) is not allowed. Therefore, all facilities under the cap must meet overall/collective BACT. When a new facility is authorized, the new facility must meet the current BACT level at the time it is authorized regardless of whether it is subject to an emissions cap. For facilities that are subject to a cap, BACT is evaluated for any new facility that is proposed to be added to what is already authorized under the cap. When existing facilities are modified, and the existing facilities are authorized under an existing emissions cap, BACT is reviewed and the cap is adjusted accordingly. Emission limitation caps are developed based on the potential to emit after the application of BACT (or, if applicable, lowest achievable emission rate) emission controls. Further, allowable emission limits, expressed as a cap for an individual facility, are expressed in terms of annual (tons per year) or short-term (e.g., pounds per hour) units. BACT is typically expressed in terms of a mass emission calculation, such as pounds per million British thermal units (lb/MMBtu) or parts per million (ppm). Establishment of caps after application of the appropriate control technology does not relax the control technology.'' We agree with TCEQ that this clarification about how BACT is used to create an emissions cap resolves our concern and conclude that the information in the letter supports our proposed conditional approval.
- EPA asked for clarification on how the Flexible Permit Program relates to major source permitting. In response Texas stated, ''facilities subject to PSD or non-attainment NSR requirements must meet control technology determined in accordance with SIP approved 30 TAC Chapter 116, Subchapter B requirements and removal, avoidance or circumvention of control equipment is not allowed for facilities subject to PSD or non-attainment NSR. We agree with TCEQ that this interpretation further supports that the Flexible Permit Program does not allow circumvention of major NSR and conclude that the information in the letter supports our proposed conditional approval.

E. Summary of EPA's Evaluation of the Flexible Permit Program as a Minor NSR Program

For the reasons presented above, EPA finds that the Flexible Permit Program,

as submitted on October 21, 2013, is limited to minor NSR permitting. EPA finds that the program satisfies the federal requirements for minor NSR programs and contains sufficient enforceable safeguards to ensure that the NAAQS and applicable control strategies are protected. Further, the Flexible Permit Program prevents circumvention of major NSR requirements by stating at 30 TAC Section 116.716(c)(1)(A) that if a new source or modification subject to either a flexible permit or flexible permit amendment is subject to major NSR requirements, either PSD or NNSR, under 30 TAC Chapter 116, Subchapter B, then the major NSR permitting requirements will apply.

Therefore, the EPA is proposing to conditionally approve the Flexible Permit Program based on the commitment from the TCEQ to adopt and submit Flexible Permit Program SIP revisions by November 30, 2014, that will reformat and organize the full program into a cohesive, understandable, and enforceable program as TCEQ proposed to do in its December 9, 2013, commitment letter.

V. Proposed Action

EPA proposes to conditionally approve the Texas Flexible Permit Program that was originally submitted as a revision to the Texas Minor NSR SIP Permit Program on November 29, 1994. We also proposed to conditionally approve the Texas Flexible Permit Program as further amended on March 13, 1996; July 22, 1998; October 25, 1999; September 11, 2000; April 12, 2001; July 31, 2002, September 4, 2002; October 4, 2002; September 25, 2003; July 2, 2010; October 5, 2010; and October 21, 2013. Our proposed conditional approval of the Texas Flexible Permit Program is conditioned on the TCEQ adopting and submitting a SIP revision addressing the December 9, 2013, commitment letter provided by the TCEQ. The commitment states that TCEQ will submit amended rules that are properly structured and consistent, as discussed earlier, with the actions taken by the Commission on September 24, 2013, and with rulemaking requirements of the Texas Administrative Procedure Act by November 30, 2014. EPA has made the preliminary determination that the Flexible Permit Program is conditionally approvable as a minor NSR permit program in accordance with the CAA Section 110 and part C, and EPA regulations at 40 CFR 51.160–51.164 for the reasons presented above and in our accompanying TSD. EPA invites the public to make comments on all aspects of the EPA proposed conditional approval of the Texas Flexible Permit Program, and to submit them by the Date listed above.

EPA proposes to conditionally approve the specific revisions to the Texas SIP identified below.

- Revisions to 30 TAC Section 39.402(a)(4) and (a)(5)—Applicability to applications for new and amended Flexible Permits—submitted July 2, 2010.
- Revisions to 30 TAC Section 116.10—General Definitions—submitted March 13, 1996; Repealed, adopted and submitted July 22, 1998; Redesignated and submitted October 4, 2002; Amended 116.10(9)(E)—submitted October 5, 2010.
- Revisions to 30 TAC Section 116.13—Flexible Permit Definitions—submitted November 29, 1994; Repealed, adopted and submitted July 22, 1998; Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.110—Applicability—submitted November 29, 1994; Section 116.110(a)(3) Repealed, adopted and submitted July 22, 1998.
- Revisions to 30 TAC Section 116.710—Applicability—submitted November 29, 1994; Revised and submitted July 22, 1998; Revised and submitted September 11, 2000.
- Revisions to 30 TAC Section 116.711—Flexible Permit Application—submitted November 29, 1994; Revised and submitted July 22, 1998; Added, redesignated and submitted April 12, 2001; Designated, added, revised and submitted September 4, 2002; and Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.714—Application Review Schedule—submitted November 29, 1994; Revised and submitted July 22, 1998.
- Revisions to 30 TAC Section 116.715—General and Special Conditions—Submitted November 29, 1994; Revised and submitted July 22, 1998; Revised and submitted September 11, 2000; Revised and submitted April 12, 2001; Revised and submitted September 4, 2002; Revised and submitted September 25, 2003.
- Revisions to 30 TAC Section 116.716—Emission Caps and Individual Emission Limitations—submitted November 29, 1994; and Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.717—Implementation Schedule for Additional Controls—submitted November 29, 1994.
- Revisions to 30 TAC Section 116.718—Significant Emission Increase—submitted November 29, 1994.
- Revisions to 30 TAC Section 116.720—Limitation on Physical and Operational Changes—submitted November 29, 1994.
- Revisions to 30 TAC Section 116.721—Amendments and Alterations—submitted November 29, 1994; Revised and submitted July 22, 1998; Revised and submitted September 11, 2000.
- Revisions to 30 TAC Section 116.722—Distance Limitations—submitted November 29, 1994; Revised and submitted September 11, 2000.
- 30 TAC Section 116.730—Compliance History—submitted November 29, 1994; Withdrawn October 21, 2013.
- Revisions to 30 TAC Section 116.740(a)—Public Notice and Comment—submitted November 29, 1994; Designated, added and submitted July 22, 1998; Revised and submitted October 25, 1999; and Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.750—Flexible Permit Fee—submitted November 29, 1994; Revised and submitted July 22, 1998; Revised and submitted September 11, 2000; Revised and submitted October 4, 2002; and Adopted revisions submitted October 21, 2013.
- Revisions to 30 TAC Section 116.760 Flexible Permit Renewal—submitted November 29, 1994.
- Revisions to 30 TAC Section 116.765—Compliance Schedule—submitted October 21, 2013.

Those regulatory sections that were identified as being withdrawn by the TCEQ in the October 21, 2013, submittal and identified in the cover letter to the package are also identified below:

- 30 TAC Section 116.711(3) (last sentence only) and (11), as amended August 21, 2002, and all earlier versions withdrawn October 21, 2013.
- Adopted revisions submitted October 21, 2013. 30 TAC Section 116.715(a), only with regard to the text ''or Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA Section 112(g), 40 CFR Part 63))'', as amended August 21, 2002, and all earlier versions withdrawn on October 21, 2013.
- 30 TAC Section 116.715(c)(6) as amended August 20, 2003, and all earlier versions withdrawn October 21, 2013. 30 TAC Section 116.716(a) and (d), as adopted November 16, 1994, withdrawn October 21, 2013.

• 30 TAC Section 116.730 adopted November 16, 1994, and repealed and readopted June 17, 1998.

• 30 TAC Section 116.740(b), adopted June 17, 1998, and amended September 2, 1999, withdrawn October 21, 2013. 30 TAC Section 116.803, adopted August 21, 2002, withdrawn October 21, 2013.

If the conditional approval of the Texas Flexible Permit Program is finalized following EPA's review of comments received and the TCEQ satisfies the terms of the commitment letter, the TCEQ will then submit a SIP revision to the EPA for review which must contain all the terms of the commitment letter. If the EPA determines that the TCEQ has met all the conditions, we will make such a finding in the **Federal Register**.

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 CAA and applicable Federal regulations. See, 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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 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 CAA; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: January 29, 2014.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2014–03119 Filed 2–11–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

RIN 0750–AH94

Defense Federal Acquisition Regulation Supplement: Clauses With Alternates—Foreign Acquisition (DFARS Case 2013–D005)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to create separate prescriptions for the basic clause as well as each alternate in each set of foreign acquisition-related provisions/clauses with one or more alternates. In addition, the proposed rule would include the full text of each provision or clause alternate.

DATES: *Comment Date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before April 14, 2014, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2013–D005, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2013–D005'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2013–D005.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2013–D005'' on your attached document.

○ *Email: dfars@mail.mil.* Include DFARS Case 2013–D005 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to add a separate prescription for the basic clause as well as each alternate. In addition, the proposed rule would include the full text of each provision/clause alternate. For clarity, the preface of the alternate will continue to explain what portions of that alternate are different from the basic provision/clause. Separate prescriptions for the basic and alternates of DFARS provisions and clauses will facilitate the use of automated contract writing systems. The proposed rule will not revise the prescriptions in any substantive way or change the applicability of the provisions/clauses or their alternates.