



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2013-0808; FRL-9912-51-OAR]**

**Approval and Promulgation of Air Quality Implementation Plans; Texas; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions of two revisions to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) to the EPA on October 5, 2010, and April 16, 2014. Together, these two SIP submittals revise the Texas Prevention of Significant Deterioration (PSD) Program to provide for the regulation of greenhouse gas (GHG) emissions and clarify the applicability of Best Available Control Technology (BACT) for all PSD permit applications. The EPA is approving portions of the October 5, 2010, and April 16, 2014, SIP revisions to the Texas SIP and New Source Review (NSR) permitting program as consistent with federal requirements for PSD permitting of GHG emissions. The EPA is taking no action on the portion of the October 5, 2010, SIP revision which pertains to the Texas Minor NSR program for Qualified Facilities and portions of the April 16, 2014, submittal that appear no longer appropriate for inclusion in the Texas SIP after the recent United States Supreme Court decision discussing greenhouse gas emissions. The EPA is approving this action under Section 110 and Part C of the Clean Air Act (CAA). In a separate but simultaneous action published elsewhere in this issue of the **Federal**

**Register**, the EPA is also rescinding the GHG PSD Federal Implementation Plan (FIP) for Texas, with three limited circumstances for retained authority.

**DATES:** This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2013-0808. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** Adina Wiley, Air Permits Section (6PD-R), telephone (214) 665-2115, e-mail [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).

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

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## **I. Background**

This final action approves portions of two revisions to the Texas SIP submitted on October 5, 2010 and April 16, 2014. The April 16, 2014, submittal includes revisions to the Texas SIP to provide the State of Texas with the authority to regulate GHG emissions, issue PSD permits governing GHG emissions, establish emission thresholds for new stationary sources and modifications to existing stationary sources that are subject to Texas' PSD permitting requirements for their GHG emissions based on their emissions of air pollutants other than GHGs (also known as "Step 1" or "anyway" sources), and revises several Minor NSR provisions to specify that Minor NSR permit mechanisms cannot be used for authorizing GHG emissions. The October 5, 2010, submittal revises the Texas SIP to clarify that all PSD permits must undergo BACT review consistent with the requirements in the Federal and Texas PSD programs.

The background for this final approval of the revisions to the Texas SIP and the background for the separate, but simultaneous action to rescind the Texas GHG PSD FIP, are discussed in detail in our February 18, 2014, proposal (79 FR 9123). In that document, we proposed to approve portions of two revisions to the Texas SIP submitted by the TCEQ on October 5, 2010, and December 2, 2013. The December 2, 2013, submittal was a request for parallel processing of revisions proposed by the TCEQ on October 23, 2013. Our February 18,

2014, proposed approval and accompanying Technical Support Document provide the EPA's evaluation of the October 5, 2010, and December 2, 2013, revisions to the Texas SIP that would provide for the regulation of GHG emissions in the Texas PSD program and clarify the applicability of BACT for all PSD permit applications. We preliminarily determined that the revisions were consistent with the CAA and the EPA's regulations and guidance for the permitting of GHG emissions in the PSD program. As such, we proposed approval of the SIP revisions and simultaneously proposed to rescind the majority of the GHG PSD FIP for Texas.

Under the EPA's "parallel processing" procedure, the EPA proposes a rulemaking action on a proposed SIP revision concurrently with the State's public review process. If the State's proposed SIP revision is not significantly or substantively changed, the EPA will finalize the rulemaking on the SIP revision as proposed after responding to any submitted comments. Final rulemaking action by the EPA will occur only after the final SIP revision has been fully adopted by the TCEQ and submitted formally to the EPA for approval as a revision to the Texas SIP. See 40 CFR part 51, Appendix V.

The TCEQ completed their state rulemaking process and adopted revisions on March 26, 2014. The TCEQ submitted these adopted changes as a revision to the Texas SIP on April 16, 2014. The EPA has evaluated the State's final SIP revision for any changes made from the time of proposal. See "Addendum to the TSD" for EPA-R06-OAR-2013-0808, available in the rulemaking docket. Our evaluation indicates that the revisions made by the TCEQ at adoption are not material changes to the regulations that we proposed to approve; and therefore, do not alter our rationale presented in the February 18, 2014, proposed approval. As such, the EPA is proceeding with our final approval of the majority of the revisions to the Texas SIP, consistent with the parallel processing provisions in 40 CFR Part 51, Appendix V. Additionally, the EPA is

not acting at this time on certain sections of the April 16, 2014, submittal that appear no longer appropriate after the recent United States Supreme Court decision, *UARG v. EPA*, as discussed in Section II of this notice. We are taking a separate but simultaneous action elsewhere in this issue of the **Federal Register** to rescind the Texas GHG PSD FIP, with the exception of three limited circumstances for retained federal permitting authority.

## **II. Recent *UARG v. EPA* U. S. Supreme Court Decision**

### *A. Overview of the Decision and Implications for this Action*

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of stationary source permitting requirements to GHGs in *Utility Air Regulatory Group (UARG) v. Environmental Protection Agency (EPA)*, 134 S.Ct. 2427 (2014). The Supreme Court held that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit, but that the EPA could continue to require that PSD permits, otherwise required based on a source's emissions of conventional pollutants ("anyway" sources), contain limitations on GHG emissions based on the application of BACT.

The Supreme Court reversed in part and affirmed in part the decision of the D.C. Circuit Court that upheld several EPA actions addressing PSD permitting requirements for greenhouse gases including the Tailoring Rule.<sup>1</sup> Although the Supreme Court concluded that "EPA exceeded its statutory authority when it interpreted the Clean Air Act to require PSD and Title V permitting for stationary sources based on their greenhouse-gas emissions," 134 S.Ct. at 2449, it

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<sup>1</sup> See Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 June 3, 2010. See also our February 18, 2014, Proposal (79 FR 9123) for a full background discussion.

did not specifically identify particular provisions of the EPA regulations it was striking down. Thus, pending further action by the United States Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) and EPA action to revise the regulations in accordance with a more specific remedy ordered by the D.C. Circuit, the provisions of 40 CFR 51.166 that provide criteria for EPA approval of state PSD permit programs remain in the Code of Federal Regulations. This includes Section 51.166(b)(48)(v), which addresses state permitting of “Step 2” sources that emit greenhouse gases in excess of 100,000 tons per year and no other pollutants over the major source thresholds. In light of *UARG*, EPA is not requiring PSD permits, either directly or through state implementation plans, for sources emitting greenhouse gases at any level unless a source emits a regulated pollutant other than greenhouse gases above the statutory major source thresholds. That means that the EPA will not apply or enforce regulations that would require states to include in their SIPs a requirement that “Step 2” sources obtain PSD permits. Thus, despite the fact that section 51.166(b)(48)(v) remains in the Code of Federal Regulations at this time, in light of the Supreme Court decision the EPA is not taking action on the provisions of the Texas SIP that would require a stationary source to obtain a PSD permit if GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major sources thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification.

The Supreme Court also affirmed the lower court’s decision that the BACT requirement applies to GHG emissions from new and modified sources that trigger PSD permitting obligations on the basis of their emissions of air pollutants other than GHG (also known as “Step 1” or “anyway” sources). The Court concluded that “EPA may continue to treat greenhouse gases as a ‘pollutant subject to regulation under [the Clean Air Act]’ for purposes of requiring

BACT for ‘anyway’ sources.” 134 S.Ct. at 2449. Accordingly, the PSD BACT requirement continues to apply to greenhouse gas emissions from any new or modified source that is otherwise subject to PSD requirements as a result of its emissions of another regulated pollutant (i.e. to an “anyway” source), and EPA will continue to implement existing regulations that limit application of the statutory BACT requirement to greenhouse gases where the construction project to be completed would emit at or above a level of 75,000 tpy of CO<sub>2</sub>e as provided in 40 CFR 51.166(b)(48)(iv).

The EPA and D.C. Circuit have long recognized, and the D.C. Circuit’s decision affirmed by the Supreme Court further confirmed, that PSD requirements apply to emissions of PSD pollutants “by automatic operation of” the Clean Air Act. *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102, 115 (D.C. Cir. 2012). The Supreme Court rejected “a greenhouse-gas-inclusive interpretation of the PSD and Title V triggers,” because the CAA does not allow the Agency to “treat greenhouse gases as a pollutant for purposes of defining a ‘major emitting facility’ (or a ‘modification’ thereof) in the PSD context.” 134 S.Ct. at 2442, 2449. But the Court did not question the longstanding interpretation of the EPA and the D.C. Circuit court that the CAA PSD permitting requirements automatically apply to major source emissions of pollutants that *are* “subject to regulation” under the Act. 134 S.Ct. at 2442 n. 6. *See also UARG*, 134 S.Ct. at 2435 (“it is unlawful to construct or modify a ‘major emitting facility’ in ‘any area to which [the PSD program] applies’ without first obtaining a permit.”). To the contrary, *UARG* affirmed the portion of the D.C. Circuit’s decision holding that the BACT requirement clearly applies to greenhouse gas emissions from “anyway” sources and that such PSD requirements apply to sources automatically by operation of the Clean Air Act. Accordingly, the EPA does not interpret *UARG* to alter the settled understanding that the BACT

requirement automatically applies to a pollutant (including greenhouse gases) once it becomes subject to regulation under the Clean Air Act. Thus, consistent with the Supreme Court's holding that EPA can "continue to" require compliance with the BACT requirement in the Clean Air Act, 134 S.Ct. 2449, the EPA will continue to apply the BACT requirement to greenhouse gases under existing regulations applicable to EPA's review of state implementation plans, including 40 CFR 51.166(j), 40 CFR 51.166(b)(12), 40 CFR 51.166(b)(49), and 40 CFR 51.166(b)(48)(i)-(iv).

The Supreme Court noted that the EPA could exercise its discretion to limit application of BACT to sources with the potential to emit greenhouse gases above a *de minimis* threshold, but that if EPA wished to do so, it would need to justify such threshold for application of BACT to GHGs on proper grounds. The Court observed that when EPA established the existing 75,000 tpy threshold the Agency did not characterize it as a *de minimis* level. 134 S.Ct. at 2449. Rather, that threshold represents a level that EPA determined to be both administratively feasible for permitting authorities to implement and reasonable for sources to comply with. 75 FR 31514, 31560 (June 3, 2010). EPA is considering additional action to establish a *de minimis* threshold for application of the BACT requirement to GHGs. Pending additional action by EPA addressing the threshold for application of the BACT requirement to greenhouse gases, the Agency will continue to apply the existing regulations that require a state PSD program to apply the PSD BACT requirement to GHG emissions from "anyway" sources that emit or have the potential to emit 75,000 tons per year tpy or more of GHG on a carbon dioxide (CO<sub>2</sub>e) basis. With respect to modified "anyway" sources, the EPA is presently reading its regulations to require that state PSD programs apply the PSD BACT requirements to GHG if both of the following circumstances are present: (1) the modification is otherwise subject to PSD for a

pollutant other than GHG; (2) the modification results in a GHG emissions increase and a net GHG emissions increase equal to or greater than 75,000 tpy CO<sub>2</sub>e and greater than zero on a mass basis.

Based on information submitted by TCEQ, the EPA concluded in its Notice of Proposed Rulemaking that TCEQ had provided sufficient assurance that it has the legal authority, personnel, and funding to implement PSD permitting requirements for greenhouse gases. Following the *UARG* decision, the State of Texas has argued in litigation before the D.C. Circuit that GHGs are not presently subject to regulation under the PSD program and that the EPA must conduct additional rulemaking to establish a de minimis level before the BACT requirement can be applied to greenhouse gas emissions in PSD permits required for construction at anyway sources. As noted above, the EPA disagrees with this position. Nevertheless, the TCEQ has communicated to the EPA that it “continues to pursue EPA approval of [its] SIP submittal ... so our agency has the full authority to implement the greenhouse gas permitting program in Texas.”<sup>2</sup> The State has further stated that “[r]egardless of litigation positions, we are currently advocating and might pursue in the future, we think it is necessary for TCEQ to assume this permitting role and issue PSD permits for greenhouse gas emissions.” Based on information supplied by TCEQ before the proposed rule and this additional assurance, EPA concludes that Texas intends to implement the PSD permitting requirements for greenhouse gases consistent with EPA’s understanding of those requirements, as articulated above, and that TCEQ continues to have sufficient legal authority to do so. Furthermore, TCEQ has confirmed that it will commit the personnel and funding necessary to issue PSD permits addressing greenhouse gases, notwithstanding the State’s ongoing efforts to persuade the court that such permits are not

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<sup>2</sup> On October 1, 2014, the TCEQ sent EPA Region 6 a clarification letter in light of the *UARG v EPA* decision. That letter is also posted in the public docket to this rulemaking

required under the Clean Air Act until EPA conducts further rulemaking. EPA's rescission of the majority of the FIP and its approval of the majority of the Texas GHG SIP are predicated on the understanding that the State of Texas will implement the PSD program requirements for greenhouse gases in accordance with TCEQ's representations.

In sum, therefore, the EPA is taking no action on the portion of the Texas SIP submittal requiring sources to obtain PSD permits based solely on their emissions of GHGs, but is otherwise finalizing its approval of the Texas SIP submittals and its rescission of the FIP and as discussed in the separate final FIP action published elsewhere in this issue of the **Federal Register**.

*B. Demonstration that the Texas PSD Program is consistent with the application of the CAA and UARG v. EPA.*

The following analysis explains how the Texas PSD program for GHGs meets the requirements of the Clean Air Act and the EPA's regulations, and fits within the parameters of the Supreme Court's decision. First, the revised Texas PSD SIP recognizes GHGs and appropriately applies GHG requirements to PSD through the new definitions of "greenhouse gases" in 30 TAC Sections 101.1 and 116.12 and the definitions adopted at 30 TAC Section 116.12 for "carbon dioxide equivalent" and "federally regulated air pollutant." The "carbon dioxide equivalent" definition is necessary to calculate the amount of GHG emissions in PSD permit applications and the revised definition of "federally regulated new source review pollutant" explicitly identifies GHGs as regulated NSR pollutants. In addition, this definition references thresholds outlined in 30 TAC Section 116.164(a)(1) and (a)(2), which include the 75,000 tpy CO<sub>2</sub>e threshold for application of BACT to GHGs as discussed above. Second, once a

GHG source is determined to be otherwise subject to PSD, the Texas PSD program elements at 30 TAC Sections 116.160, 116.164(a)(1), 116.164(a)(2), and 116.169 apply in the following way:

1. The applicability of the Texas PSD program is governed by 30 TAC Section 116.160(a) and applies to each proposed new major source or major modification in an attainment or unclassifiable area. To ensure that the Texas PSD program approved into the SIP does not use GHG emissions alone to determine whether a source is a major stationary source or a major modification subject to PSD, the EPA is taking no action at this time on the substantive revisions in 116.160(a) pertaining to GHGs, or to the revisions to the definitions in 30 TAC Section 116.12(19) and (20) that expanded “major stationary source” and “major modification” to apply to sources that emit only GHGs above major source levels and modifications that increase only GHGs above applicable levels. This ensures that the portion of the existing Texas PSD program at 30 TAC Section 116.160(a) that is part of the approved Texas SIP does not extend PSD applicability to sources not already subject to PSD based on emissions of pollutants other than GHGs and limits the scope of the approved SIP solely to “anyway sources” and modifications.
2. After it has been determined that an existing source proposing to modify is a major source potentially subject to PSD requirements, the next step in the Texas PSD program is to apply the netting test as required under 30 TAC Section 116.160(b). Under the Texas regulations, this netting test is to determine whether the modification requires a PSD permit because it results in a net significant increase of federally regulated new source review pollutants. The EPA is taking no action at this time on the substantive revisions to the definition in 30 TAC Section 116.12(20) of “major modification” so that

the PSD requirements in the approved Texas SIP will only apply to a modified source when there is a net significant increase of a regulated pollutant other than GHGs.

3. Finally, if the emissions from construction of a new source or net emission increase from a major modification are greater than the levels at 52.21(b)(23) for a particular pollutant or the interim thresholds for GHGs at 30 TAC Section 116.164(a)(1) and (a)(2), then BACT is required to be applied to each such pollutant under 30 TAC Section 116.160(c).<sup>3</sup> This section incorporates Section 52.21(j) of EPA's regulation, which requires BACT for each "regulated NSR pollutant" that a new source emits or that a major modification increases in a significant amount. The Texas regulations do not incorporate the definition of "regulated NSR pollutant" in Section 52.21(b)(50) of EPA's regulations, but rather contain a Texas-specific definition of "federally-regulated NSR pollutant" in Section 116.12(15), which covers greenhouse gases. Because the Texas regulations approved into the SIP in this action explicitly identify GHGs as a federally-regulated NSR pollutant above the interim thresholds in 30 TAC Section 116.164(a)(1) and (a)(2), the 75,000 tpy CO<sub>2</sub>e threshold will be used for GHGs rather than the default of any amount greater than 0 tpy for a pollutant not listed at 40 CFR 52.21(b)(23). Therefore, with only the provisions approved in this action identified above, the approved portions of the Texas PSD program in the state's SIP will apply BACT for GHG emissions at the interim thresholds to only "anyway" sources and modifications.

The EPA concludes that the Texas SIP and PSD program regulate GHGs through the PSD program as consistent with the June 23, 2014, *UARG v. EPA* decision for "anyway sources".

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<sup>3</sup> Note the Texas PSD SIP incorporates the major modification levels at 40 CFR 52.21(b)(23).

C. *Provisions where the EPA is Taking No Action*

Because of the Supreme Court’s ruling, the EPA is not taking final action at this time on certain SIP provisions. We are not taking action at this time on the provisions listed below as they are not necessary to appropriately regulate “anyway” sources. We believe these provisions are severable from other portions of the Texas SIP submissions and we do not need to act on them now to finalize approval of all other provisions of the submittal.

- Revisions to 30 TAC Section 106.4(a)(1), (a)(3) and (a)(4) adopted on March 26, 2014, and submitted on April 16, 2014;
- Substantive revisions to the definition of “major stationary source” at 30 TAC Section 116.12(19) adopted on March 26, 2014, and submitted on April 16, 2014<sup>4</sup>;
- Substantive revisions to the definition of “major modification” at 30 TAC Section 116.12(20) adopted on March 26, 2014, and submitted on April 16, 2014<sup>5</sup>;
- Revisions to 30 TAC Section 116.111(a)(2)(I) adopted on March 26, 2014, and submitted on April 16, 2014;
- Revisions to 30 TAC Section 116.160(a) and (b) adopted on March 26, 2014, and submitted on April 16, 2014;
- New 30 TAC Sections 116.164(a)(3), (a)(4), (a)(5), and (b) adopted on March 26, 2014, and submitted on April 16, 2014;

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<sup>4</sup> Note that the EPA is approving the renumbering of the Definitions in 30 TAC Section 116.12, which will include the renumbering of the existing SIP-approved definition of “major stationary source” from 30 TAC Section 116.12(17) to 30 TAC Section 116.12(19).

<sup>5</sup> Note that the EPA is approving the renumbering of the Definitions in 30 TAC Section 116.12, which will include the renumbering of the existing SIP-approved definition of “major modification” from 30 TAC Section 116.12(18) to 30 TAC Section 116.12(20). We are also approving other non-substantive revisions to the name of the Figure within the definition, and to footnotes 1 and 5 of the Figure.

- Revisions to 30 TAC Sections 116.610(b) adopted on March 26, 2014, and submitted on April 16, 2014;
- Revisions to 30 TAC Sections 116.611(b), 116.611(c)(3), 116.611(c)(3)(A), and 116.611(c)(3)(B) adopted on March 26, 2014, and submitted on April 16, 2014; and
- Revisions to 30 TAC Sections 122.122(e)(3), (e)(3)(A), and (e)(3)(B) adopted on March 26, 2014, and submitted on April 16, 2014.

In a letter dated October 1, 2014, the TCEQ informed EPA of its view that the provisions listed above “are no longer appropriate or necessary for the SIP” after the Supreme Court decision in *UARG v. EPA*. EPA concurs with this assessment by TCEQ and is not taking action on the submitted revisions to these provisions in this rulemaking.

*D. Provisions where the EPA is Finalizing Action*

The remaining provisions in the Texas SIP submissions can operate independently and do not depend on the provisions listed above to provide authority for the TCEQ to issue PSD permits for “anyway sources” that contain limitations on GHGs based on application of BACT. The provisions we are approving in this action are listed below. These provisions are sufficient by themselves to ensure the TCEQ will have a GHG PSD program in place that is consistent with the Court’s ruling and the provisions of 40 CFR 51.166 that the EPA is continuing to apply and enforce at this time.

- Substantive and non-substantive revisions to 30 TAC Section 116.111(a)(2)(i), (a)(2)(B), (a)(2)(C), (a)(2)(D), and (a)(2)(F) adopted on September 15, 2010, and submitted on October 5, 2010;

- Revisions to 30 TAC Sections 39.411(e)(11), (e)(15), (e)(16), (f)(4), (f)(8), 39.412(a) – (d), 39.419(e)(1), and 39.420(e)(4) adopted on March 26, 2014, and submitted on April 16, 2014;
- Revisions to 30 TAC Section 101.1 adopted on March 26, 2014, and submitted on April 16, 2014;
- Revisions to 30 TAC Section 101.10 adopted on March 26, 2014, and submitted on April 16, 2014;
- Revisions to 30 TAC Section 101.201 adopted on March 26, 2014, and submitted on April 16, 2014;
- Revisions to 30 TAC Section 106.2 and 106.4(d) adopted on March 26, 2014, submitted on April 16, 2014;
- Revisions to 30 TAC Section 116.12 adopted on March 26, 2014, submitted on April 16, 2014, including the renumbering of SIP-approved definitions for “major stationary source” and “major modification” at non-substantive revisions within those definitions;<sup>6</sup>
- Revisions to 30 TAC Section 116.111(b)(1) adopted on March 26, 2014, submitted on April 16, 2014;
- Revisions to 30 TAC Section 116.160(c) adopted on March 26, 2014, submitted on April 16, 2014;
- New provisions at 30 TAC Section 116.164(a) introductory paragraph, (a)(1), and (a)(2) adopted on March 26, 2014, submitted on April 16, 2014;

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<sup>6</sup> As specified in Section II.C of this final rule, the EPA is taking no action at this time on the substantive revisions to the definitions of “major stationary source” and “major modification” pertaining to non-anyway sources and modification.

- New provisions at 30 TAC Section 116.169(a) adopted on March 26, 2014, submitted on April 16, 2014;
- Revisions to 30 TAC Section 116.610(a)(1) adopted on March 26, 2014, submitted on April 16, 2014;
- Revisions to 30 TAC Section 116.611(c)(1) and (c)(2) adopted on March 26, 2014, submitted on April 16, 2014; and
- Revisions to 30 TAC Section 122.122(a), (e)(1), and (e)(2) adopted on March 26, 2014, submitted on April 16, 2014.

The EPA anticipates that we will need to take additional action to revise the federal PSD requirements for GHG PSD permitting in light of the Supreme Court decision. The timing and content of such revisions are expected to be informed by ongoing legal proceedings before the D.C. Circuit. These revisions to federal requirements may necessitate future revisions to the Texas SIP. The EPA will work with Texas, and all other affected states, to address future changes in our federal permitting requirements in an expeditious manner.

### **III. Response to Comments**

We received comments from Air Alliance Houston, the Greater Houston Partnership (GHP), the House Bill 788 Working Group (HB 788 Working Group), Sierra Club, Texas Chemical Council (TCC), Texas Commission on Environmental Quality (TCEQ), Texas Industry Project (TIP), the Texas Oil and Gas Association (TXOGA), the Texas Pipeline Association (TPA), and public citizens on our February 18, 2014, proposal. All comments received on the February 18, 2014, proposed action are available in the public docket to this rulemaking. Below is our summary of each comment received relating to the SIP action and our response. The EPA

notes that the comments and our responses to comments relevant to the final FIP rescission action are in the separate but simultaneous final action. Comments and responses that relate to both final actions are found in both documents.

*Comment 1:* The TCEQ, GHP, HB 788 Working Group, TCC, TIP, and TPA submitted comments supportive of our proposed action and urge the EPA to proceed with final approval and rescind the associated FIP.

*Response 1:* The EPA appreciates the support of the commenters. No changes have been made to the final SIP approval rule as a result of these comments.

*Comment 2:* The TCC encouraged the EPA to make the FIP rescission effective immediately upon approval of the SIP. As support, the commenters referenced the EPA's final approval action of the Wyoming GHG PSD Program at 78 FR 69998, November 22, 2013.

*Response 2:* The EPA interprets the comment as a request that the EPA make the final approval of the GHG PSD SIP and the rescission of the GHG PSD FIP effective immediately upon publication in the **Federal Register** pursuant to the Administrative Procedure Act (APA), Section 553(d). As explained more fully in Section IV of this document and in Comment/Response 3, the EPA finds that this final SIP action and the separate but simultaneous final FIP rescission action should be made effective immediately upon publication in the **Federal Register**.

The EPA also wishes to clarify that the Wyoming action, cited in the comment as precedent for an immediate effective action, does not utilize Section 553(d) of the APA. The EPA's November 22, 2013, final approval of the Wyoming GHG PSD Program and FIP

rescission were both effective 30 days after publication in the **Federal Register**. Specifically, the Wyoming action was published on November 22, 2013, and the SIP approval and FIP rescission were effective on December 23, 2013.

*Comment 3:* TXOGA requested that the final SIP approval and the FIP rescission be effective on the date of **Federal Register** publication rather than the date 30 days after publication. TIP commented that the EPA should invoke the “good cause” exception in the APA to make the final approval and FIP rescission immediately effective upon publication. TIP suggested that using the “good cause” exception would: 1) “level the playing field” between Texas GHG permitting and GHG permitting in states with EPA-approved GHG permitting programs; 2) provide economic benefits by allowing consolidation of air permitting for Texas GHG sources at the TCEQ; 3) relieve a restriction imposed by the FIP; and 4) is procedural in nature and does not change substantive requirements for GHG PSD permitting.

*Response 3:* The EPA agrees that this is an appropriate circumstance to make this rule effective immediately upon publication, pursuant to 5 U.S.C. Section 553(d) of the APA. As detailed in Section III of this final SIP action and in Section III of the separate but simultaneous final FIP action, we have determined that both the final approval of the GHG PSD SIP and the separate but simultaneous rescission of the GHG PSD FIP be effective immediately upon publication in the **Federal Register**. An immediate effective date is authorized under the APA, Section 553(d)(1), which provides that a rulemaking action may become effective less than 30 days after publication if the rule “grants or recognizes an exemption or relieves a restriction”; and Section 553(d)(3), which allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.”

First, the immediate effective date helps to relieve the restriction on the TCEQ's ability to issue single GHG PSD permits and will eliminate the dual EPA/TCEQ PSD permit system, which in turn, promotes a more efficient single permitting authority process. Second, we have determined there is "good cause" to make this rule effective immediately because it will allow Texas to begin processing complete PSD GHG applications that meet the appropriate federal PSD requirements immediately and it will allow the regulated community to receive PSD permits containing GHG limits, issued by Texas, as soon as possible. An immediate effective date provides Texas with undelayed authority to regulate GHG emissions in PSD permits issued to "anyway" sources and allows Texas to become the sole PSD permitting authority in the state, except in three limited circumstances. In addition, an expedited transition of the GHG PSD program from the EPA to Texas creates a more efficient use of EPA and State resources, and creates certainty for the regulated community and public. Additionally, the EPA and the TCEQ have worked closely to ensure Texas has adequate authority and resources to administer the GHG PSD permitting program without a 30-day delay, which is normally the time required for affected parties to adjust their behavior and prepare before the final rule takes effect. The EPA has determined that moving as expeditiously as practicable to consolidate GHG PSD permitting with the TCEQ PSD permitting program is supported here as the State has the authority and resources to administer the GHG PSD permitting program. The EPA finds that the above reasons support an effective date prior to thirty days after the date of publication under 5 U.S.C. Section 553(d) for both this final SIP approval action and the separate but simultaneous final FIP action. We have revised the effective date of our final SIP action as a result of these comments.

*Comment 4:* The HB 788 Working Group commented that the EPA should proceed with finalizing our proposed parallel processing even though the TCEQ Commissioners are likely to revise the Texas GHG PSD rule package in response to public comments received at the March 26, 2014, agenda meeting. The HB 788 Working Group summarized the proposed changes and characterized the changes as follows: 1) clarify the distinction between the GHG PSD program and Texas minor NSR requirements; 2) remove the exemption for CO<sub>2</sub> from biogenic sources from the new definition of CO<sub>2</sub>-equivalent emissions (CO<sub>2</sub>e), consistent with the EPA's action in the proposed GHG PSD SIP approval; 3) clarify GHG PSD applicability and ensure consistency with federal requirements; 4) address recordkeeping requirements for *non*-PSD changes in GHGs; and 5) establish a deadline for GHG-only major sources to certify emissions of GHGs below major source thresholds that is consistent with the federal Part 70 and Texas Chapter 122 deadlines.

*Response 4:* The TCEQ submitted the final GHG PSD SIP submittal on April 16, 2014. As discussed above in Section I of this rulemaking and the Addendum to the TSD, the TCEQ Commissioners did not adopt material changes as a result of public comment. The EPA has evaluated the adopted changes and determined that each change is not significant or substantive in nature. Because these were not material changes to the regulations that the EPA proposed to approve, the EPA's notice of proposed rulemaking provided sufficient notice to members of the public of the substance of the TCEQ regulations that the EPA is approving into the Texas SIP in this final rule. However, as discussed above in Section II of this final action, some of the provisions that the EPA proposed to approve are now no longer appropriate for inclusion in the Texas SIP after the Supreme Court's ruling. Nevertheless, the EPA is finalizing approval of the majority of the revisions to the Texas SIP as proposed, including those provisions with revisions

that are not significant or substantive, adopted by the TCEQ on March 26, 2014, and submitted on April 16, 2014. See Section II.C and II.D of this final rulemaking for an explanation of which submitted provisions where we are taking no action and which provisions are being finally approved.

*Comment 5:* The EPA should state for the record that GHG permits issued by the EPA may be amended by the TCEQ once permitting authority is delegated.

*Response 5:* As stated in our proposed approval, the TCEQ submitted a letter on January 13, 2014, (available in the docket for this rulemaking) that provided clarity and assurances that the TCEQ has the general authority under the Texas Clean Air Act to administer the EPA-issued GHG PSD permits, including revising or amending those permits in the future. Specifically, the “TCEQ will assume full PSD responsibility for the administration and implementation of final GHG PSD permits issued by the EPA upon notification from the EPA that all administrative and judicial appeal processes have expired or have been completed or concluded...assuming full PSD responsibility includes the authority to ... process and issue any and all subsequent PSD permit actions relating to such permits (e.g., amendments).” See 79 FR 9123, 9132. February 18, 2014.

We would also like to correct one statement from the commenter concerning the EPA’s delegation of permitting authority to the TCEQ. The EPA’s final action today approves under Section 110 of the CAA, the Texas GHG PSD permit process as part of the Texas SIP. The EPA wishes to clarify to the commenter that our final action is a SIP approval, not a delegation of the EPA’s authority. Once a SIP is approved, the state permitting authority issues permits consistent with the SIP under state law. CAA Section 110 does not involve a “delegation” of the EPA

authority under federal law to states. Rather, states exercise primary authority as implemented through their EPA-approved SIPs, including issuing state permits under state law under a PSD SIP. In general, when the EPA approves a PSD SIP, the EPA makes a determination that a state-issued preconstruction permit that complies with the state law in the SIP will satisfy the federal PSD permitting requirements that are applicable under the CAA and EPA regulations at the time of the SIP approval. No changes have been made to the final SIP approval rule as a result of this comment.

*Comment 6:* One commenter found it difficult to provide specific comments due to the pending Supreme Court decision on GHG and asked that the EPA discuss the impact, if any, of the pending Supreme Court decision around GHG.

*Response 6:* Although not specifically referenced in the comment, we believe the commenter's reference to "pending Supreme Court decision around GHG" refers to the following case that was before the Supreme Court of the United States: Case 121146; *Utility Air Regulatory Group v. The Environmental Protection Agency* and consolidated cases. The Supreme Court decided this case on June 23, 2014. See Section II of this final action for a detailed discussion. In summary, the Supreme Court affirmed in part and reversed in part the lower court's decision on the applicability of the PSD Program to GHGs, rejecting the application of the PSD program to additional sources based only on GHG emissions but affirming the applicability of BACT to GHGs emitted by sources otherwise required to obtain PSD permits based on emissions of other pollutants. Accordingly, the decision has influenced our final action on the April 16, 2014, SIP submittal. The EPA is proceeding with the finalization of the majority of the revisions to the Texas SIP and the separate but simultaneous FIP removal that we proposed to approve on

February 18, 2014. However, in order to proceed consistent with the Court's decision as detailed in Section II and Comment/Response 4, the EPA is taking no action at this time on the portions of the April 16, 2014, submittal that provided for the permitting of "Step 2," "non-anyway" sources.

*Comment 7:* The EPA should state for the record that the reasonable possibility recordkeeping requirements pursuant to 40 CFR 52.21(r)(6) do not apply to GHG emissions if the emissions increase is less than 75,000 tpy CO<sub>2</sub>e. The reasonable possibility requirements under 40 CFR 52.21(r)(6) apply to a "regulated NSR pollutant." The definition of "regulated NSR pollutant" in 40 CFR 52.21(b)(50) includes any pollutant that is "subject to regulation." Pursuant to 40 CFR 52.21(b)(49), GHG is not subject to regulation and thus is not a regulated NSR pollutant if the emissions increase is less than 75,000 tpy CO<sub>2</sub>e.

*Response 7:* After the Supreme Court decision, the EPA considers GHG emissions to be subject to regulation only if the criteria at 40 CFR 52.21(b)(49)(i) through (iv) are satisfied. As discussed above, these provisions remain in the Code of Federal Regulations at the present time. The EPA may need to consider modifications to these regulations, but under the existing provisions, the reasonable possibility requirements at 40 CFR 52.21(r)(6) do not apply for GHG emissions below the subject to regulation thresholds.

*Comment 8:* Air Alliance Houston commented that the EPA should not approve the Texas rules without first requiring the TCEQ to explicitly allow for public review and comment on all BACT analyses.

*Response 8:* As discussed in our February 18, 2014, proposed approval, the proposed revisions to the Texas SIP and the existing Texas SIP already require public review and comment on all BACT analyses. Even though we are not finalizing approval of the submitted revisions to 30 TAC Section 116.111(a)(2)(I) that were adopted on March 26, 2014, and submitted on April 16, 2014, the existing Texas SIP at 30 TAC Section 116.111(a)(2)(I) requires that any permit application for a proposed facility in an attainment area comply with all applicable requirements of PSD review. As discussed in our February 18, 2014, proposed approval, one such applicable requirement for PSD permitting is the SIP-approved requirement at 30 TAC Section 116.111(b)(2) which requires that Chapter 39 public notice provisions are followed for PSD permits declared administratively complete on or after September 1, 1999. As also discussed in our February 18, 2014, proposed approval, the EPA, in a separate rulemaking action on January 6, 2014, previously approved the public notice provisions in 30 TAC Chapter 39 as consistent with all requirements for PSD public notice. See 79 FR 9123, 9129. As discussed more fully in Section II.B of this final SIP approval action, the EPA has concluded that the Texas PSD program will apply GHG BACT to all “Step 1” or “anyway” sources. Therefore, any GHG PSD permit application will be subject to PSD public notice requirements under the SIP-approved public notice provisions for PSD permit applications at 30 TAC Chapter 39. Specifically, the SIP-approved public notice provisions at 30 TAC Section 39.405(g) require the applicant to make available for public review the permit application, additional materials submitted in support of the application, the air quality analysis, the preliminary determination summary, and the draft permit. The BACT analysis for a given GHG PSD permit application for an “anyway” source will therefore be included in the materials available for public review and comment.

Please note that we are no longer taking action on provisions that deal with “non-anyway” or “Step 2” sources, as discussed elsewhere in this notice.

*Comment 9:* Air Alliance Houston commented that the EPA should require the TCEQ to assess add-on GHG pollution control equipment consistent with the federal BACT program. Air Alliance Houston further commented that the three-tiered Texas BACT process required by the Texas Clean Air Act is not consistent with the top-down, five-step federal BACT analysis. Public citizens also commented to request clarification on how BACT is determined and questioned who is responsible for determining whether controls such as carbon capture would be feasible.

*Response 9:* The EPA’s final action today approves revisions to 30 TAC Section 116.111(a)(2)(C) to clarify the application of BACT for all permit applications in Texas, including GHG PSD permit applications. This provision clarifies that the TCEQ use two types of BACT for permit reviews – federal BACT pursuant to the requirements of Title I Part C and Texas BACT under the Texas Clean Air Act (TCAA). The revision clarifies federal BACT must be applied first to any facility subject to PSD requirements. While this provision is germane to all Texas PSD permits, this applies to PSD permits for anyway sources with GHG emissions. These GHG PSD permits will be required to apply federal BACT as well as TCAA BACT. Federal BACT requirements will govern the permitting process if there is a difference in stringency between the federal BACT requirements and the Texas BACT requirements. See the discussion in our February 18, 2014, proposed approval at 79 FR 9123, 9128. Additionally, as discussed in past SIP approval actions on the Texas PSD program, the EPA has determined that

the Texas BACT process is an appropriate alternative to the federal top-down process.<sup>7</sup> This action on the Texas GHG PSD SIP revision does not alter our determination that the TCEQ will continue to implement the Texas PSD program consistent with federal requirements. This approval of 30 TAC Section 116.111(a)(2)(C) further supports our previous determinations that the TCEQ shall apply Texas BACT and federal BACT to all PSD permits, and if there is a conflict, the federal BACT requirements will apply. As to the specific process for applying BACT review in a PSD permit, under state law at 30 TAC Sections 116.111(a)(2)(C) and 116.160(c)(1)(A), the applicant must submit an application including specific control technology<sup>8</sup>. As the PSD permitting authority, the TCEQ, under its PSD permit rules at 30 TAC Sections 116.160 and 116.164(a) introductory paragraph, (a)(1) and (2) only, shall review the application and specified control technology and determine whether the technology is considered BACT. Under the Texas SIP at 30 TAC Section 39.405(g)(3), the TCEQ's analysis of the proposed BACT shall be included in the proposed state issued permit, which is subject to public review and comment. Public citizens have an opportunity to review the TCEQ's proposed BACT determination and provide comments on the proposed permit during the specific comment period under 30 TAC Section 55.152. Pursuant to the Texas SIP at 30 TAC Section 55.156(b), the TCEQ must respond to all comments received on proposed PSD permits.

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<sup>7</sup> See the EPA's proposed approval of the Texas PSD program on December 22, 1989 at 54 FR 52823, 52825. See also the EPA's final approval of the Texas PSD program on June 24, 1992 at 57 FR 28093, 28096.

<sup>8</sup> The revisions to 30 TAC Section 116.160(c) adopted on March 26, 2014, and submitted on April 16, 2014, refer to the requirements for GHG PSD permitting in 30 TAC Section 116.164. As noted in Section II.C of this final SIP approval, EPA is not taking action at this time on portions of 30 TAC Section 116.164 that add thresholds pertinent to whether a non-anyway source or modification requires a PSD permit solely for GHG emissions. But, EPA is acting to approve the portions of 30 TAC Sections 116.164 that apply a "75,000 TPY "major modification level" to increases in GHGs at anyway sources and modifications, so it remains appropriate for EPA to act to approve the submitted revisions to 30 TAC Section 116.160(c) adding the reference to the thresholds for GHGs in 30 TAC Section 116.164(a)(1) and (a)(2).

*Comment 10:* Public citizens submitted several comments regarding the EPA's proposed approval of the GHG PSD SIP, the rescission of the GHG PSD FIP, and the transition process to be used when transferring permitting authority to the TCEQ. Specifically, the commenters are concerned that the transition process is lacking the "voice" of the people on whether the public feels it is the right of the applicant/company to be able to choose the EPA or the TCEQ as the permitting authority without the public's input on pending applications. The commenters urged the EPA to retain the permitting authority in sensitive nonattainment areas such as in Brazoria County, Texas. Finally, the commenters submitted information regarding ozone monitor siting and air quality in Clute, water quality impacts in the Galveston Bay, and maps identifying locations of proposed GHG PSD permits.

*Response 10:* While the EPA appreciates the commenter's concerns about the public having a voice in the selection of a permit authority, we believe the appropriate regulatory and permit transition procedures are in place to ensure any GHG PSD permit, whether issued by the EPA or the TCEQ, complies with all federal PSD requirements. Further, the EPA offered an opportunity for review and comment on our proposed determination that the TCEQ has the requisite authority to address GHGs in the PSD program in Texas upon approval of the SIP and rescission of the FIP for GHGs. We received no comments on this specific issue. As stated in the proposal, the EPA finds the TCEQ has the necessary legal and regulatory provisions in place to successfully implement the federal requirements for GHG PSD permitting. As such, we are finalizing the approval of the Texas SIP provisions for GHG PSD permitting, with the above noted exceptions where we are taking no action at this time on certain revisions that appear to no longer be needed after the Supreme Court's *UARG v. EPA* decision. In a separate but simultaneous action published elsewhere in this issue of the **Federal Register**, we are rescinding

the majority of the Texas GHG PSD FIP. Upon the effective date of both of these actions, the TCEQ will have the authority to process applications and issue GHG PSD permits, except where the EPA retained authority in three limited circumstances. As stated in the EPA's February 18, 2014, proposal and transition document referenced in that action, the EPA contacted each GHG PSD permit applicant who had submitted an application to the EPA at the time of our proposed approval. We provided these permit applicants the opportunity to elect either the EPA or the TCEQ as the issuer of its GHG permit by May 15, 2014. All permit applicants submitted a request for permitting authority by the deadline of May 15, 2014. For the permit applications that have been submitted since the EPA's proposed approval, the EPA is retaining permitting authority and will continue evaluating and processing these permit applications unless and until the applicant submits a written request to transfer to the TCEQ, the EPA issues a final permit, or a permit application is withdrawn from the EPA. The EPA Region 6 GHG website has been updated to identify which permit applications have been retained by the EPA for processing and those which have been transferred to the TCEQ. We will continue to update this website as applicants make their decisions regarding permitting authority. Upon the effective date of our final SIP approval and simultaneous FIP rescission, the EPA will no longer accept applications for GHG PSD permits in Texas. From that point forward, the TCEQ will be the only permitting authority for GHG PSD permits in Texas, with the exception of the three limited circumstances where the EPA retains authority over a permit application or an issued permit has not gone through exhaustion of all administrative and judicial appeals, as discussed in our final FIP rescission action. Both the EPA and the TCEQ are required to issue GHG PSD permits that satisfy federal requirements for PSD permitting. In the instances where a permit applicant elected to transfer the permitting authority to the TCEQ and the EPA has already public noticed a draft

permit and received comments, the EPA intends to contact each commenter to advise them to resubmit comments to the TCEQ pursuant to 30 TAC Sections 39.412 and 55.152.

Second, as we are finalizing this SIP approval rulemaking today, we find the TCEQ has adopted regulations sufficient to regulate emissions of GHGs from “anyway” major emitting sources under the Texas PSD program. As part of the Texas PSD program, a GHG PSD permit application will be subject to the Texas SIP-approved public notice and comment procedures that are consistent with the EPA’s federal PSD public notice requirements at 40 CFR 51.166(q). For new GHG PSD permit applications processed by the TCEQ and those “anyway” applications transferred from the EPA to the TCEQ for which the EPA has not proposed a draft permit, the Texas SIP-approved public notice process will involve two opportunities for public comment under 30 TAC Sections 39.418 and 39.419 for the Notice of Receipt of Application and Intent to Obtain Permit (NORI) and the Notice of Application and Preliminary Decision (NAPD). For the subset of permit applications that are transferred to the TCEQ after the EPA has already proposed a draft permit, these applications will either use the NORI and NAPD or will go through a Combined Public Notice under 30 TAC Section 39.412. Opportunity for public review and comment will be provided in all instances where the TCEQ is the permitting authority for a GHG PSD permit application.

We would like to correct one statement from the commenter concerning nonattainment permitting, which is that the EPA should retain the GHG PSD FIP permitting authority in sensitive nonattainment areas. There are no GHG nonattainment areas; the EPA was the permitting authority only for GHG PSD permits. The TCEQ has been, and continues to be, the permitting authority for Nonattainment New Source Review (NNSR) permits in Texas. In Brazoria County, the EPA was the permitting authority for the GHG PSD permits but the TCEQ

was the permitting authority for the NNSR permitting program and all other non-GHG PSD pollutants.

After review and consideration of the additional materials submitted by the citizens, the EPA has determined that the data submitted regarding ozone monitors and air quality in Clute, water quality in Galveston Bay, and maps identifying locations of the proposed GHG PSD permit applications, are beyond the scope of our review and are not relevant to our proposed approval of the Texas GHG PSD SIP. No changes were made to the final SIP approval rule as a result of these comments.

*Comment 11:* Air Alliance Houston commented that the EPA should encourage the TCEQ to compile an annual GHG emissions inventory of those sources required to submit emissions information under the EPA's GHG Reporting Program.

*Response 11:* While we appreciate the commenter's suggestion, this requirement is beyond the scope of this action. Our final action today approves revisions to the Texas PSD SIP to provide the TCEQ the authority to regulate GHG emissions from "anyway" sources under the Texas PSD program consistent with the PSD requirements after the Supreme Court's *UARG v. EPA* decision. The EPA's PSD program regulation applicable to approval of a state program (40 CFR 51.166) does not require a GHG emissions inventory. However, as the commenter noted, the EPA has a separate requirement under the federal GHG Reporting Program that requires certain sources to report annual GHG emissions to the EPA for tracking in a national database. See the EPA regulations at 40 CFR Part 98. We note that the data submitted to the GHG Reporting Program is made available to the public at <http://www.epa.gov/climatechange/ghgemissions> and can be readily sorted by state. The implementation of the GHG Reporting Program is outside the

scope of the Texas SIP revision that the EPA is approving in this action. No changes were made to the final SIP approval rule as a result of these comments.

*Comment 12:* Several commenters submitted comments regarding the EPA's document titled "Transition Process for Transferring GHG PSD Permitting Authority to TCEQ." These comments are summarized below:

A. Comments about notification to companies regarding the Transition Process:

- TCC suggests that the EPA clarify that letters sent to applicants will not be mailed until the final rule has been published in the Texas Register, on or about April 17, 2014.
- TCC requests that the EPA post a message or announcement on its website indicating that letters concerning the transition process have been submitted to any of the GHG applicants.

B. Comments about the deadline for selecting a permitting authority under the Transition Process:

- TCC suggests the EPA not impose a firm 30-day decision deadline because of concerns that permit applicants selecting the TCEQ as the permitting authority may experience delay in processing of applications if the FIP rescission is delayed.
- TCC requests that the EPA clarify whether a permit applicant will have the opportunity to request additional time beyond 30 days to submit a response regarding permitting authority.

- C. Comments about the Transition Process for Issued Permits: TCC, TIP, and TXOGA requested that the EPA reconsider the transition process, such that permit applications currently being reviewed in the Environmental Appeals Board (EAB) could be transferred to the TCEQ.

*Response 12:* The EPA appreciates the comments on the Transition Process we will be using to transfer GHG PSD permitting authority to the TCEQ. After consideration of the comments and in light of the recent *UARG v. EPA* decision, we have decided that it is necessary to revise, in part, our Transition Process as well as revise, in part, the EPA's proposed retained authority under the FIP. Below are our specific responses to the comments raised regarding the Transition Process and a discussion of how the EPA is revising our retained authority under the separate but simultaneous FIP rescission.

*Response 12A:* For permit applicants with applications submitted at the time of our February 18, 2014, proposal, we are making no changes to the Transition Process. The EPA has provided adequate notice to those initial permit applicants regarding the Transition Process. The EPA mailed letters to each GHG permit applicant on file with the EPA on March 27, 2014, requesting a response no later than May 15, 2014. Those letters are available for public access in the docket for the SIP and FIP rulemaking actions. By communicating with our initial permit applicants immediately following the TCEQ Commissioners vote on March 26, 2014, to adopt the GHG PSD revisions, we provided our initial permit applicants with a reasonable amount of time to weigh individual business considerations and respond with a permitting authority request. The letters were delivered to the applicants via U.S. Postal delivery and email, ensuring multiple means of communication with each applicant. Additionally, our Region 6 GHG website was updated to indicate the availability for review and comment on the EPA's proposed approval of

the Texas GHG PSD SIP, rescission of the Texas GHG PSD FIP, and Transition Process. No changes were made to the final SIP approval rule as a result of these comments.

The EPA recognizes that since the time of our proposed rulemaking, we have received additional permit applications and those permit applicants were not afforded a similar opportunity to select a permitting authority by the May 15, 2014, deadline specified in the Transition Process. For these permit applications submitted after the February 18, 2014, proposal, the EPA is retaining the permitting authority until the EPA either issues a final permit and all subsequent administrative and judicial appeals are exhausted, the applicant submits a written request to be transferred to the TCEQ, or the applicant withdraws the permit from the EPA.

*Response 12B:* The EPA does not believe it is necessary to extend the deadline for requesting a transfer of permitting authority beyond the May 15, 2014, deadline, as specified in our Transition Process for the initial permit applications that were submitted at the time of our February 18, 2014, proposed action. We received written permit authority requests from all permit applicants in house at the time of the proposed notice by the specified May 15, 2014, deadline.

However, in consideration of these comments and in light of the *UARG v. EPA* decision, we have decided that for any permit applications that were submitted after our proposed rulemaking, the EPA will retain permitting authority and continue to process and evaluate any pending permit application for an anyway source or modification unless or until the applicant submits a written request to transfer the authority to the TCEQ or withdraws the permit application from the EPA. The EPA will continue to process and evaluate any pending permit application for an anyway source or modification. There is no 30-day time period for a decision

imposed on the permit applicants. Rather, the applicant can make an informed business decision through consultation with the EPA and the TCEQ, up until the EPA has issued a final permit.

The EPA's retained authority under the FIP was revised as a result of these comments.

*Response 12C:* At this time, we intend to transfer all initial permit applications and related materials to the TCEQ where a permit applicant requested the transfer in writing by May 15, 2014, as specified in the Transition Process. Additionally, as discussed above in Responses 12A and 12B, for any permit application submitted after our February 18, 2014, proposed rulemaking, the EPA will transfer the permit application and related materials to the TCEQ where the permit applicant submits a written request to transfer to the TCEQ. The EPA will confirm the transfer of the permit application by providing a letter to the TCEQ and the permit applicant wherein we transfer the permit application, related materials, and state that we consider the request for transfer a withdrawal of the application that removes the application from review and further action by the EPA. As discussed in our February 18, 2014, proposed rulemaking, the EPA's permitting authority "will cease upon an applicant's written request to the EPA withdrawing the pending permit application before a final determination is made." See 79 FR 9123, 9133. A final determination on the permit is made when all administrative and judicial appeals processes have been exhausted. The EPA will retain permitting authority for "anyway" GHG PSD permits that are issued or "anyway" permit applications denied by the EPA for which either the time for filing an administrative appeal has not expired or all administrative and judicial appeals processes have not been completed. As stated in our Transition Process, a GHG PSD permit applicant has the ability to withdraw the permit application before the EPA and submit a new application to the TCEQ at any time until the permit becomes final. Because a permit does not become final until agency review procedures are exhausted, an applicant can

withdraw an application while a permit is under EAB review. No changes were made to the final SIP approval rule as a result of these comments, but we have modified the authority retained by EPA in the FIP for certain permit applications for other reasons.

*Comment 13:* Sierra Club submitted several comments and supporting exhibits requesting that the EPA not approve the GHG PSD SIP and rescind the FIP until the TCEQ submits clarifications regarding access to judicial review for GHG PSD permits. First, Sierra Club commented that if the commission acts on a GHG permit, then the Texas regulations appear to require a party to go through the contested case hearing process in order to exhaust administrative remedies, which is necessary to later seek judicial review. However, HB 788 removes the opportunity for a contested case hearing for GHG permits. As a result, the TCEQ has not adequately clarified the process to exhaust all administrative remedies before seeking judicial review when the commission acts on a GHG permit.

*Response 13:* Because judicial review of PSD permits is important and necessary under the Act, we have reevaluated the Texas judicial review process as it applies to GHG PSD permits issued by the TCEQ. 77 FR 65305, at 65307 (Oct. 26, 2012).<sup>9</sup> The TCEQ provided a letter to the EPA dated May 30, 2014,<sup>10</sup> to clarify the judicial review process and the associated administrative remedies with respect to the GHG PSD permits issued by Texas. This letter explains the processes to exhaust administrative remedies and confirms that Texas law provides an

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<sup>9</sup> “[W]e interpret the CAA to require an opportunity for judicial review of a decision to grant or deny a PSD permit, whether issued by EPA or by a State under a SIP-approved or delegated PSD program. See 61 FR 1880, 1882 (Jan. 24, 1996) (The EPA’s proposed disapproval of Virginia’s PSD program SIP revision due to State law standing requirements that limited judicial review); 72 FR 72617, 72619 (December 21, 2007) (in approving South Dakota’s PSD program, the EPA stated: ‘We interpret the statute and regulations to require at minimum an opportunity for state judicial review of PSD permits’).” 77 FR 65307.

<sup>10</sup> Clarification Letter from Mr. Richard A. Hyde, P.E., Executive Director, TCEQ to Mr. Ron Curry, Regional Administrator, EPA Region 6 (May 30, 2014) [hereinafter “Judicial Review Clarification Letter”]. This letter is available in the docket for this rulemaking.

opportunity for judicial review of all GHG PSD permits issued by the TCEQ. Texas regulations do not require a party to go through the contested case hearing process in order to exhaust administrative remedies when the commission acts on a GHG permit. Section 50.119(b) provides that “[i]f the commission acts on an application, § 80.272 [Motion for Rehearing] of this title applies.” Further, Section 50.119(c)(3) provides that motions for rehearing may be filed on “the commission’s decision on an application.” Section 80.272 is a procedural provision that sets out the process for filing a motion for rehearing after the commission makes a decision on a permit. State law allows the TCEQ to establish a motion for rehearing via regulation, even when there is no statutory right to a contested case hearing.<sup>11</sup> Section 50.119(c) does not require a contested case hearing for a motion for rehearing to be available. We recognize that the judicial review process under Texas law differs from the administrative and judicial review processes available for PSD permit decisions under 40 CFR part 124 (opportunity to petition for administrative review by the EPA’s Environmental Appeals Board (EAB)) and Section 307(b) of the CAA (opportunity to seek review before a federal Circuit Court of Appeals) when the EPA or a delegated agency under 40 CFR 52.21 is the PSD permit issuer. However, the CAA does not require that the process for judicial review of the grant or denial of a PSD permit issued under a SIP approved PSD program be identical to that provided when the EPA or a delegated agency is the PSD permit issuer under 40 CFR 52.21. 77 FR 65305 at 65307 (Oct. 26, 2012). No revisions were made to the final SIP approval rule as a result of this comment.

*Comment 14:* Sierra Club also commented that the availability of judicial review for PSD permits is too limited because the TCEQ restricts standing requirements to “affected persons”, which the

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<sup>11</sup> *Tex. Air Control Bd. v. Travis Cnty*, 502 S.W.2d 213, 215 (Tex. Civ. App.-Austin 1973, no writ); *see also, Sproles Motor Freight Line, Inc. v. Smith*, 130 S.W.2d 1087, 1088 (Tex. Civ. App.-Austin 1939, writ ref d).

commenter alleges is more restrictive than Article III standing under the U.S. Constitution.<sup>12</sup> Sierra Club is also concerned that Texas will assert that no person has standing to challenge a GHG PSD permit because the TCEQ does not believe that anyone is affected by GHG emissions. Sierra Club asks the EPA to require the TCEQ to amend its regulations to clarify that persons who participate in or comment on the permitting process will have standing to seek review of a final permit decision in court.

*Response 14:* The Texas permitting program adequately provides access to judicial review as required under Title I of the CAA for PSD. The EPA believes that Congress intended such opportunity for state judicial review of PSD permit actions to be available to permit applicants and at least those members of the public who participated in the public comment process and can satisfy threshold standing requirements under Article III of the Constitution. 61 FR at 1882. The Texas permitting program enables any member of the public who participated in the public comment process on a GHG PSD permit and who meets the threshold standing requirements of Article III of the Constitution to obtain judicial review of the permit in the State's court system after exhausting the administrative remedies, either through a Motion to Overturn or Motion for Rehearing. 38 Tex. Reg. 7845, at 7854 (Nov. 8, 2013). The definition of "affected person" that commenter refers to applies to the contested case hearing process. *See* 30 TAC 53.3, Judicial Review Clarification Letter, pages 1-2. As discussed above, the contested case hearing process does not apply to Texas' GHG PSD permitting program. Access to judicial review for GHG PSD permits issued by the TCEQ is governed by THSC § 382.032, and standing for judicial review of

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<sup>12</sup>Sierra Club states that the requirement to demonstrate that a member of the public is an "affected person" has been prohibitively onerous in past the TCEQ proceedings under the contested case hearing process. *See e.g., Rawls v. Texas Comm'n on Env'tl. Quality*, 11-05-00368CV, 2007 WL 1849096 (Tex. App. June 28, 2007); *Friends of Canyon Lake, Inc. v. Guadalupe-Blanco River Auth.*, 96 S.W.3d 519, 527 (Tex. App. 2002); and *Sierra Club and Public Citizen v. TCEQ*, District Court of Travis County, Texas, Case No. D-1-GN-13-000678.

such permits is commensurate with Article III of the Constitution. 38 Tex. Reg. at 7849.<sup>13</sup>

Therefore, Texas' program meets the minimum requirements for judicial review required for PSD SIP programs. If the EPA discovers evidence to support the assertion that the TCEQ's GHG permitting program failed to provide adequate access to judicial review as federally required under Title I of the CAA for PSD, then the EPA could address this implementation failure on a permit specific basis or by using another CAA remedy mechanism. No revisions were made to the final SIP approval rule as a result of this comment.

*Comment 15:* Finally, Sierra Club states that the TCEQ's SIP submittal should clarify the path to seek judicial review to raise GHG PSD claims for permits that address both GHG and non-GHG emissions.

*Response 15:* The TCEQ's Judicial Review Clarification Letter explains the administrative and judicial review processes for consolidated permit applications for GHG and non-GHG emissions. If the TCEQ receives a request for a contested case hearing on a consolidated application, the entire application will be forwarded to the commissioners for consideration. If the commissioners grant a hearing request, the application and draft permit will be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing on issues related to the non-GHG portion of the application and draft permit. If SOAH holds an evidentiary hearing, SOAH will then send a Proposal for Decision to the commission on the contested portion of the application. At that point, the commissioners will consider and take action on the entire consolidated application and draft permit, including the GHG PSD portion and the non-GHG

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<sup>13</sup> THSC section 382.032(a) states that, "[a] person affected by a ruling, order, decision, or other act of the commission or of the executive director, if an appeal to the commission is not provided, may appeal the action by filing a petition in a district court of Travis County."

portion. All final actions by the commissioners on a consolidated application are subject to the motion for rehearing requirement. If a motion for rehearing is filed and the commissioners deny the motion or if it is overruled by operation of law, the final order may be appealed to a Travis County District Court. Judicial Review Clarification Letter, pages 2-3. No revisions were made to the final SIP approval rule as a result of this comment.

#### **IV. Effective Date of Final Action**

The EPA has determined that this final SIP approval action and the separate but simultaneous final FIP action are effective immediately upon publication under the authority of 5 U.S.C. Section 553(d) of the APA. The expedited effective date for this final SIP approval action and the separate but simultaneous FIP action is authorized under both 5 U.S.C. Section 553(d)(1) and 553(d)(3) of the APA. Section 553(d)(1) allows an effective date less than 30 days after publication if a substantive rule relieves a “restriction.” Section 553(d)(3) allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” The EPA has determined that it is appropriate to make both final actions effective upon publication because the final approval of the majority of the Texas GHG PSD SIP and the separate but simultaneous removal of the majority of the Texas GHG PSD FIP will both relieve a permitting restriction and there is “good cause” to allow Texas to begin processing PSD GHG permit applications that meet the appropriate federal PSD requirements immediately. Final immediate action relieves a restriction by promoting an efficient single permitting authority process, supports an efficient use of EPA and State resources, and creates certainty for the regulated community and public. It provides Texas with undelayed authority to regulate major GHG emitting sources, and the EPA and the TCEQ have worked

closely to ensure the State has adequate authority and resources to administer the GHG permitting program without a 30-day delay, which is normally the time required for affected parties to adjust their behavior and prepare before a final rule takes effect. The EPA has determined that moving as expeditiously as practicable to consolidate GHG PSD permitting with the TCEQ is consistent with the State's authority and resources to administer the GHG PSD permitting program. The EPA finds that the above reasons support an effective date prior to thirty days after the date of publication under 5 U.S.C. Section 553(d) for both this final SIP approval action and the separate but simultaneous FIP action by establishing good cause for making the rule immediately effective and demonstrating that the rule relieves a restriction.

## **V. Final Action**

The EPA finds that the October 5, 2010, revisions to the Texas SIP that are part of this rulemaking are approvable because they are in accordance with the CAA and the EPA regulations regarding SIP development and NSR permitting. The EPA finds that the majority of the April 16, 2014, revisions to the Texas SIP that are part of this rulemaking are approvable because they are in accordance with the CAA and the EPA regulations regarding SIP development and GHG regulations, and consistent with the Supreme Court's *UARG v. EPA* ruling. The EPA approves the following revisions to the Texas SIP under Section 110 and Part C of the Act and will revise the table at 40 CFR 52.2270(c) accordingly:

- Revisions to 30 TAC Section 116.111 adopted on September 15, 2010, and submitted on October 5, 2010, to clarify the application of BACT to all PSD permit applications in the Texas NSR program;
- Revisions adopted on March 26, 2014, and submitted on April 16, 2014, necessary to

provide the TCEQ the authority to regulate GHG emissions under the Texas PSD Program:

- Revisions to Public Notice requirements at 30 TAC Sections 39.411(e)(11), (e)(15), (e)(16), (f)(4), (f)(8), 39.412(a) – (d), 39.419(e)(1), and 39.420(e)(4).
- Revisions to the General Air Quality Definitions at 30 TAC Sections 101.1.
- Revisions to the Emission Inventory Requirements at 30 TAC Section 101.10.
- Revisions to Emissions Event Reporting and Recordkeeping Requirements at 30 TAC Section 101.201.
- Revisions to the Permits by Rule Minor NSR program at 30 TAC Sections 106.2 and 106.4(d).
- Revisions to the Definitions for Texas NSR Permitting at 30 TAC Section 116.12, including substantive revisions to the definition of “federally regulated new source review pollutant”, new definitions of “Carbon dioxide equivalent” and “Greenhouse gases”, and non-substantive renumbering and updates to correct grammar and formatting of existing SIP-approved definitions.
- Revisions to Permit Application provisions for Texas NSR Permitting at 30 TAC Section 116.111(b)(1).
- Revisions to the Texas PSD Program at 30 TAC Section 116.160(c) that address permitting requirements for “anyway” sources
- New 30 TAC Section 116.164(a) introductory paragraph, (a)(1) and (a)(2) for anyway GHG PSD requirements.
- New 30 TAC Section 116.169(a) to establish the transition process for GHG permitting.

- Revisions to the Standard Permit Minor NSR program at 30 TAC Sections 116.610(a)(1) and 116.611(c)(1) and (c)(2).
- Revisions to the definition of Potential to Emit at 30 TAC Section 122.122 (a), (e)(1), and (e)(2).

The EPA is severing and taking no action at this time on the remainder of the October 5, 2010, SIP submittal for the adoption and implementation of the Texas Minor NSR Qualified Facilities Program. The EPA is also taking no action at this time on the following portions of the April 16, 2014, SIP submittal that address “Step 2” permitting and were impacted by the Supreme Court’s *UARG v. EPA* decision:

- Revisions to 30 TAC Section 106.4(a)(1), (a)(3) and (a)(4) adopted on March 26, 2014, and submitted on April 16, 2014;
- Substantive revisions to the definition of “major stationary source” pertaining to “non-anyway” sources and modifications at 30 TAC Section 116.12(19) adopted on March 26, 2014, and submitted on April 16, 2014;
- Substantive revisions to the definition of “major modification” pertaining to “non-anyway” sources and modifications at 30 TAC Section 116.12(20) adopted on March 26, 2014, and submitted on April 16, 2014;
- Revisions to 30 TAC Section 116.111(a)(2)(I) adopted on March 26, 2014, and submitted on April 16, 2014;
- Revisions to 30 TAC Section 116.160(a) and (b) adopted on March 26, 2014, and submitted on April 16, 2014;

- New 30 TAC Sections 116.164(a)(3), (a)(4), (a)(5), and (b) adopted on March 26, 2014, and submitted on April 16, 2014;
- Revisions to 30 TAC Sections 116.610(b) adopted on March 26, 2014, and submitted on April 16, 2014;
- Revisions to 30 TAC Sections 116.611(b), 116.611(c)(3), 116.611(c)(3)(A), and 116.611(c)(3)(B) adopted on March 26, 2014, and submitted on April 16, 2014; and
- Revisions to 30 TAC Sections 122.122(e)(3), (e)(3)(A), and (e)(3)(B) adopted on March 26, 2014, and submitted on April 16, 2014.

The EPA is also approving the following three letters from the TCEQ into the Texas SIP at 40 CFR 52.2270(e):

- December 2, 2013, Letter from the TCEQ that clarifies the TCEQ has the authority under the Texas Clean Air Act to apply the Texas PSD program to all pollutants newly subject to regulation, including non-NAAQS pollutants into the future;
- January 13, 2014, Letter from the TCEQ that clarifies the TCEQ has the general authority to administer EPA issued GHG PSD permits and to process and issue any and all subsequent PSD actions relating to EPA issued GHG PSD permits; and
- May 30, 2014, Letter from the TCEQ that clarifies the judicial review process for Texas PSD permits.

As a result of our final approval of the April 16, 2014, revisions to the Texas SIP for GHG PSD permitting, the EPA is simultaneously rescinding the majority of the GHG PSD FIP

for Texas at 40 CFR 52.2305(a), (b), (c), and (d) as discussed in the separate but simultaneous final action published elsewhere in this issue of the **Federal Register**.

The EPA also finds under the authority of 5 U.S.C. Section 553(d) of the APA, to make this final SIP approval action and the separate but simultaneous final FIP action effective upon **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Upon the effective date of this final SIP approval and the separate but simultaneous FIP rescission, the TCEQ will immediately resume responsibility for GHG PSD permitting, with the exception of the three limited circumstances where the EPA is retaining GHG PSD permitting authority under the FIP, as described in the separate but simultaneous FIP action. As such, all new GHG PSD permit applications will be submitted to and processed by the TCEQ.

## **VI. Statutory and Executive Order Reviews**

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

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make any rule effective “at such time as the Federal agency promulgating the rule determines” if the agency makes a “good cause” finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5. U.S.C. 808(2). As stated previously, the EPA has made such a “good cause” finding, including the reasons therefore, and established an effective date of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The EPA submitted a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the CAA.)

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

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

Dated: October 22, 2014.

Ron Curry,

Regional Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR Part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart SS – Texas**

2. In §52.2270:

- a. The table in paragraph (c) entitled “EPA Approved Regulations in the Texas SIP” is amended by revising the entries for Sections 39.411, 39.419, 39.420, 101.1, 101.10, 101.201, 106.2, 106.4, 116.12, 116.111, 116.160, 116.610, 116.611, 122.122 and adding new entries in sequential order for Sections 39.412, 116.164, and 116.169; and
- b. The table in paragraph (e) entitled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding entries at the end of the table for clarification letters dated December 2, 2013, January 13, 2014, and May 30, 2014.

The revisions and additions read as follows:

**§ 52.2270 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
* * * * *				
Chapter 39 – Public Notice				
Subchapter H – Applicability and General Provisions				
* * * * *				
Section 39.411	Text of Public Notice	3/26/2014	[Insert date of <b>FR</b> publication] [Insert <b>FR</b> page number where document begins]	SIP includes 39.411(a), 39.411(e)(1)-(4)(A)(i) and (iii), (4)(B), (e)(5)(A), (e)(5)(B), (e)(6)-(10), (e)(11)(A)(i), (e)(11)(A)(iii), (e)(11)(A)(iv), (e)(11)(B)-(F), (e)(13), (e)(15), (e)(16), (f)(1)-(8), (g), and (h).
Section 39.412	Combined Notice for Certain Greenhouse Gases Permit Applications	3/26/2014	[Insert date of <b>FR</b> publication] [Insert <b>FR</b> page number where document begins]	
* * * * *				

Section 39.419	Notice of Application and Preliminary Determination	3/26/2014	[Insert date of <b>FR</b> publication] [Insert <b>FR</b> page number where document begins]	SIP includes 39.419(e) (e)(1) and (e)(2).
Section 39.420	Transmittal of the Executive Director's Response to Comments and Decisions	3/26/2014	[Insert date of <b>FR</b> publication] [Insert <b>FR</b> page number where document begins]	SIP includes 39.420(c)(1)(A)-(D)(i)(I) and (D)(i)(II), (D)(ii), (c)(2), and (d)-(e).
* * * * *				
Chapter 101 – General Air Quality Rules				
Subchapter A – General Rules				
Section 101.1	Definitions	3/26/2014	[Insert date of <b>FR</b> publication] [Insert <b>FR</b> page number where document begins]	
* * * * *				
Section 101.10	Emissions Inventory Requirements	3/26/2014	[Insert date of <b>FR</b> publication] [Insert <b>FR</b> page number where document begins]	
* * * * *				
Subchapter F – Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities				
Division 1 – Emissions Events				

Section 101.201	Emissions Event Reporting and Recordkeeping Requirements	3/26/2014	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	101.201(h) is not in the SIP.
* * * * *				
Chapter 106 – Permits by Rule				
Subchapter A – General Requirements				
* * * * *				
Section 106.2	Applicability	3/26/2014	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	
Section 106.4	Requirements for Permitting by Rule	3/26/2014	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	The SIP approved provisions at 30 TAC Section 106.4(a)(1), (a)(3), and (a)(4) are those adopted by the State as of 4/20/2011.
* * * * *				
Chapter 116 (Reg 6) - Control of Air Pollution by Permits for New Construction or Modification				
Subchapter A – Definitions				
* * * * *				

Section 116.12	Nonattainment and Prevention of Significant Deterioration Review Definitions	3/26/2014	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	The SIP does NOT include the substantive revisions to the definitions of “major stationary source” at 30 TAC Section 116.12(19) or “major modification” at 30 TAC Section 116.12(20) pertaining to “Step 2” or “non-anyway” GHG sources. The SIP includes the TCEQ’s letter dated 5/3/2012, which explains and clarifies the TCEQ’s interpretation of the definition of “plant-wide applicability limit” in 30 TAC Section 116.12(24).
* * * * *				
Subchapter B – New Source Review Permits				
Division 1 – Permit Application				
* * * * *				
Section 116.111	General Application	3/26/2014	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	30 TAC Section 116.111(a)(2)(I) is SIP-approved as adopted by the State as of 8/21/2002. The SIP does NOT include 30 TAC Section 116.111(a)(2)(K).
* * * * *				
Division 6 – Prevention of Significant Deterioration Review				

Section 116.160	Prevention of Significant Deterioration Requirements	3/26/2014	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	The PSD SIP includes 30 TAC Section 116.160(a) and (b) as adopted by the State as of 6/2/2010.  The PSD SIP includes a letter from the TCEQ dated December 2, 2013, committing that Texas will follow a SIP amendment process to apply its PSD SIP to additional pollutants that are regulated in the future, including non- NAAQS pollutants.  The PSD SIP includes a letter from the TCEQ dated May 30, 2014, clarifying the judicial review process for the Texas PSD permit program.
* * * * *				
Section 116.164	Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources	3/26/2014	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	The PSD SIP does NOT include 30 TAC Sections 116.164(a)(3), (a)(4), (a)(5), and (b).
Section 116.169	Greenhouse Gases Program Transitions	3/26/2014	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	The PSD SIP does NOT include 30 TAC Section 116.169(b).  The PSD SIP includes a letter from the TCEQ dated January 13, 2014, regarding the TCEQ's authority to administer EPA-issued GHG PSD permits.
* * * * *				
Subchapter F – Standard Permits				

* * * * *				
Section 116.610	Applicability	3/26/2014	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	30 TAC Section 116.610(b) is SIP-approved as adopted by the State as of 11/20/2002. The SIP does NOT include 30 TAC Section 116.610(d).
Section 116.611	Registration to Use a Standard Permit	3/26/2014	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	30 TAC Section 116.611(b) is SIP-approved as adopted by the State as of 11/20/2002. The SIP does NOT include 30 TAC Section 116.611(c)(3), (c)(3)(A), and (c)(3)(B).
* * * * *				
Chapter 122 – Federal Operating Permits				
Subchapter B – Permit Requirements				
Division 2 – Applicability				
Section 122.122	Potential to Emit	3/26/2014	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	The SIP does NOT include 30 TAC Section 122.122(e)(3), (e)(3)(A), or (e)(3)(B).

\* \* \* \* \*

(e) \* \* \*

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

Name of SIP provisions	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments

* * * * *				
Commitment Letter from the TCEQ regarding regulation of PSD pollutants into the future	Statewide	December 2, 2013	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	Clarifies that the TCEQ has the authority under the Texas Clean Air Act to apply the Texas PSD program to all pollutants newly subject to regulation, including non-NAAQS pollutants into the future.
Clarification Letter from the TCEQ regarding authority to administer EPA issued GHG PSD permits	Statewide	January 13, 2014	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	Clarifies that the TCEQ has the general authority to administer EPA issued GHG PSD permits. Also clarifies that the TCEQ has authority to process and issue any and all subsequent PSD actions relating to EPA issued GHG PSD permits.
Clarification Letter from the TCEQ regarding Judicial Review for PSD Permits	Statewide	May 30, 2014	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	Clarifies the judicial review process for Texas PSD permits.

3. Section 52.2303 is amended by adding paragraph (a)(1)(xi) to read as follows.

**§ 52.2303 Significant deterioration of air quality.**

(a) \* \* \*

(1) \* \* \*

(xi) **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** (as revised by the Texas Commission on Environmental Quality on March 24, 2014, and submitted on April 16, 2014, and further clarified in letters dated December 2, 2013, January 13, 2014, and May 30, 2014) to address PSD permitting requirements of GHG emissions for major sources and modifications required to obtain PSD permits because of emissions of pollutants other than GHGs promulgated by EPA on June 3, 2010.

\* \* \* \* \*

[FR Doc. 2014-26314 Filed 11/07/2014 at 8:45 am; Publication Date: 11/10/2014]