may, on 7-days notice to the grantee, withhold further payment, suspend the supportive services grant, or prohibit the grantee from incurring additional obligations of supportive services grant funds, pending corrective action by the grantee or a decision to terminate in accordance with paragraph (c) of this section. VA will allow all necessary and proper costs that the grantee could not reasonably avoid during a period of suspension if such costs meet the provisions of the applicable Federal Cost Principles.

(c) *Termination.* Supportive services grants may be terminated in whole or in part only if paragraphs (c)(1), (2), or (3) of this section apply.

(1) By VA, if a grantee materially fails to comply with the terms and conditions of a supportive services grant award and this part.

(2) By VA with the consent of the grantee, in which case VA and the grantee will agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the grantee upon sending to VA written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if VA determines in the case of partial termination that the reduced or modified portion of the supportive services grant will not accomplish the purposes for which the supportive services grant was made, VA may terminate the supportive services grant in its entirety under either paragraphs (c)(1) or (2) of this section.

(d) *Deobligation of funds.* (1) VA may deobligate all or a portion of the amounts approved for use by a grantee if:

(i) The activity for which funding was approved is not provided in accordance with the approved application and the requirements of this part;

(ii) Such amounts have not been expended within a 1-year period from the date of the signing of the supportive services grant agreement;

(iii) Other circumstances set forth in the supportive services grant agreement authorize or require deobligation.

(2) At its discretion, VA may re-advertise in a Notice of Fund Availability the availability of funds that have been deobligated under this section or award deobligated funds to applicants who previously submitted applications in response to the most recently published Notice of Fund Availability.

(Authority: 38 U.S.C. 501, 2044)

§ 62.81 Supportive services grant closeout procedures.

Supportive services grants will be closed out in accordance with the following procedures upon the date of completion:

(a) No later than 90 days after the date of completion, the grantee must refund to VA any unobligated (unencumbered) balance of supportive services grant funds that are not authorized by VA to be retained by the grantee.

(b) No later than 90 days after the date of completion, the grantee must submit all financial, performance and other reports required by VA to closeout the supportive services grant. VA may authorize extensions when requested by the grantee.

(c) If a final audit has not been completed prior to the date of completion, VA retains the right to recover an appropriate amount after considering the recommendations on disallowed costs once the final audit has been completed.

(Authority: 38 U.S.C. 501, 2044)

[FR Doc. 2010–28407 Filed 11–9–10; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0132; FRL–9223–2]

Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing its proposal to partially approve and partially disapprove a revision to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) in a letter dated January 23, 2006 (the January 23, 2006 SIP submittal). Today's action finalizes our May 13, 2010 proposal that concerned revisions to 30 Texas Administrative Code (TAC) Chapter 101, General Air Quality Rules, Subchapter A General Rules; and Subchapter F Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities. We are finalizing our proposed approval of those portions of the rule that are consistent with the federal Clean Air Act (the Act or CAA), and finalizing our proposed disapproval of those portions of the rule that are inconsistent with the Act. More specifically, we are finalizing our proposed disapproval of provisions that provide for an affirmative defense against civil penalties for excess emissions during planned maintenance, startup, or shutdown activities and related provisions that contain nonseverable cross-references to the affirmative defense provision. A disapproval of these provisions means that an affirmative defense is not available in an enforcement action in Federal court to enforce the SIP for violations due to excess emissions during planned maintenance, startup, or shutdown activities. We are taking this action under section 110 of the Act.

DATES: This rule will be effective on January 10, 2011.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2006–0132. All documents in the docket are listed on the *http://www.regulations.gov* Web site. 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. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6691, fax (214) 665–7263, e-mail address *shar.alan@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA.

Table of Contents

I. What actions did we propose?

In EPA's May 13, 2010 proposal (75 FR 26892), we proposed to partially approve and partially disapprove a revision to the Texas SIP, as submitted to EPA on January 23, 2006. More specifically, the May 13, 2010 proposal reflected EPA's intent to partially approve and partially disapprove submitted revisions to 30 TAC General Air Quality Rule 101 into the Texas SIP, as outlined in the Table below.

30 TAC General Air Quality Rule 101	Type of action	Type of change
Subchapter A, Section 101.1 (Definitions)	Proposed Approval	Revised Section.
Subchapter F, Section 101.201 (Emissions Event Reporting and Recordkeeping Requirements) [1].	Proposed Approval	Revised Section.
Subchapter F, Section 101.211 (Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements) [2].	Proposed Approval	Revised Section.
Subchapter F, Section 101.221 (Operational Requirements)	Proposed Approval	New Section.
Subchapter F, Section 101.222 (a)–(g) (Demonstrations)	Proposed Approval	New Section.
Subchapter F, Section 101.222 (h)–(j) (Demonstrations)	Proposed Disapproval	New Section.
Subchapter F, Section 101.223 (Actions to Reduce Excessive Emissions)	Proposed Approval	New Section.

[1] Subsequent to the proposal, TCEQ withdrew section 101.201(h) from EPA's review. Letter from Bryan W. Shaw, TCEQ Chairman to Alfredo Armendariz, EPA Region 6 Administrator, dated August 5, 2010.

[2] Subsequent to the proposal, TCEQ withdrew section 101.211(f) from EPA's review. Letter from Bryan W. Shaw, TCEQ Chairman to Alfredo Armendariz, EPA Region 6 Administrator, dated August 5, 2010.

Section E of the May 13, 2010 proposal (75 FR at pp. 26896–26897) stated EPA's reasoning for the proposal to disapprove sections 101.222(h) (Planned Maintenance, Startup, or Shutdown Activity), 101.222(i) (concerning effective date of permit applications), and 101.222(j) (concerning processing of permit applications) into the Texas SIP. In short, we proposed to disapprove section 101.222(h) because it provides an affirmative defense for excess emissions during planned maintenance. Section 101.222(h) also provides for an affirmative defense for excess emissions during planned startup and shutdown. However, because the provisions regarding excess emissions during planned startup and shutdown are not severable from that for planned maintenance, we proposed to disapprove section 101.222(h) in its entirety. We further noted that a preferable means of dealing with excess emissions from planned startup and shutdown, in cases where sources are unable to comply with an applicable emission limit during those periods, would be to establish an alternative limit that would apply during startup and shutdown.

We proposed to disapprove sections 101.222(i) and (j), which concern the timing and processing procedures for permits that would address excess emissions during periods of maintenance, startup or shutdown, because those provisions were not severable from section 101.222(h). For more detail, see 75 FR 26896–26897 of the May 13, 2010 proposal.

We proposed to approve section 101.1 (Definitions) because it provides for consistency among Subchapters A and F, thereby facilitating implementation of the rule and other legislative changes. We proposed to approve section 101.201 (Emissions Event Reporting and Recordkeeping Requirements), because it establishes new requirements that local air pollution authorities be informed of excess emissions. We proposed to approve section 101.211 (Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), because it provides for reporting and recordkeeping of the initial notification and final report of the scheduled maintenance, startup, and shutdown activities. We proposed to approve section 101.221 (Operational Requirements) because it provides the requirement that air pollution abatement equipment must be maintained and be in good working order. We proposed to approve section 101.222(a)–(g) (Demonstrations) because it provides an affirmative defense for certain emission events that is consistent with the interpretation of the Act as set forth in our guidance documents. We also proposed to approve section 101.223 (Actions to Reduce Excessive Emissions) because it provides for a corrective action plan and written notification for facilities determined to have excessive emission events to take necessary actions to reduce the future occurrence of such events.

II. When did the public comment period end?

EPA's proposed action of May 13, 2010 (75 FR 26892) provided a 30-day public comment period. During this 30-day period we received 7 letters requesting EPA extend the public comment period. In response, we extended the public comment period by two weeks, such that it closed on June 28, 2010, rather than June 14, 2010. *See* 75 FR 33220 (June 11, 2010).

III. Who submitted comments to us?

During the public comment period, we received written comments on our May 13, 2010 proposal (75 FR 26892) from the Lower Colorado River Authority; Texas Municipal Power Agency; National Environmental Development Association's Clean Air Project; Texas Industry Project; American Electric Power; Luminant; Utility Air Regulatory Group; Texas Oil and Gas Association; Texas Association of Business; Texas Commission on Environmental Quality; Texas Mining and Reclamation Association; Gulf Coast Lignite Coalition; San Miguel

Electric Cooperative; Association of Electric Companies of Texas; and Environmental Clinic—University of Texas School of Law on behalf of Citizens for Environmental Justice, Lone Star Chapter Sierra Club, Public Citizen's Texas Office, Air Alliance Houston, Environmental Integrity Project, and Environmental Defense Fund.

IV. What is our final action?

Except for two provisions that were withdrawn by the State by letter dated August 5, 2010, as described below, we are finalizing our proposal to approve revisions to 30 TAC Chapter 101, Subchapter A General Rules; and Subchapter F Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities of the January 23, 2006 SIP submittal as revisions to the federally-approved Texas SIP.

Subsequent to the publication of the proposed rule, in a letter dated August 5, 2010, TCEQ notified EPA of its withdrawal from EPA review of sections 101.201(h) (concerning annual emissions event reporting) and 101.211(f) (concerning annual scheduled maintenance, startup, and shutdown activity reporting), as adopted by the TCEQ on December 14, 2005. The withdrawal of these two pieces of the submission does not affect our ability to take final action approving the remaining pieces we proposed to approve. As an initial matter, the withdrawn portions are independent provisions that are severable from the remaining regulations pending before EPA. In addition, the withdrawal of these provisions does not create a defect in the remaining portions of the rule for which we proposed approval. Paragraphs (a) through (g) of section 101.201 and paragraphs (a) through (e) of section 101.211 acted upon today contain all of the necessary requirements for how and when to report excess emissions events. TCEQ only withdrew the annual reporting requirement in the two paragraphs, and an annual reporting requirement is not a criterion for an approvable excess emissions SIP revision. Furthermore, TCEQ already has the ability to collect emissions information under the Texas SIP at the Emission Inventory Requirements in 30 TAC sections 101.10 (b) and (f), which require an owner or operator to submit emission inventories and/or related data, including excess emissions occurring during maintenance activities, startup and shutdowns, and upset conditions, to the state.[3] Section 101.10 was approved into Texas SIP on January 26, 1999 at 64 FR 3847.

Because the submitted rule and the Texas SIP already contain adequate reporting requirements for excess emissions during planned and unplanned startup, shutdown, maintenance and malfunction events, TCEQ's withdrawal of the sections referenced above does not affect our partial approval of the remaining portions of the rule which were proposed for approval. Thus, as described below, we are taking final action to approve all of the provisions for which we proposed approval, with the exception of withdrawn sections 101.201(h) and 101.211(f) of the January 23, 2006 SIP submittal. We have made TCEQ's August 5, 2010 withdrawal letter available for public inspection in the docket associated with this action, identified as EPA–R06–OAR–2006–0132.

In summary, we are finalizing our May 13, 2010 proposal to approve Subchapter A, section 101.1 (Definitions); and Subchapter F, sections 101.201 (Emissions Event Reporting and Recordkeeping Requirements) (except for 101.201(h)), 101.211 (Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements) (except for 101.211(f)), 101.221 (Operational Requirements), 101.222(a) through (g) (Demonstrations), and 101.223 (Actions to Reduce Excessive Emissions) into the Texas SIP. We are approving these provisions for the reasons provided in our proposed approval: They clarify existing reporting requirements; they clarify that the rule does not allow exemptions from compliance with federal requirements, including any requirements in the federally-approved SIP; they provide for an affirmative defense[4] from unplanned startup, shutdown, or maintenance (*i.e.,* malfunctions), consistent with the CAA as interpreted by EPA; and they provide for a corrective action plan and written notification concerning excessive emission events. *See* section D of our May 13, 2010 proposal (75 FR at 26894).

We are also finalizing our May 13, 2010 proposal to disapprove sections 101.222(h) (Planned Maintenance, Startup, or Shutdown Activity), 101.222(i) (concerning effective date of permit applications), and 101.222(j) (concerning processing of permit applications) of the January 23, 2006 submittal. As we explain more fully below, we are disapproving section 101.222(h) because it provides an affirmative defense against penalties for excess emissions during planned maintenance activities. Because the portions of section 101.222(h) that provide an affirmative defense for excess emissions during planned startup and shutdown are not severable from the provision for maintenance, those provisions are also disapproved.[5] Section 101.222(i) concerns the scheduling and applicable effective dates for permit applications submitted to TCEQ for sources that request unauthorized emissions associated with the planned maintenance, startup, or shutdown activities be permitted. Since section 101.222(i) is not severable from section 101.222(h), which we are disapproving, we are disapproving section 101.222(i). Section 101.222(j) concerns the processing of permit applications referenced in 101.222(h), and provides the Executive Director with the authority to process, review, and permit unauthorized emissions from planned maintenance, startup, or shutdown activities. We explained our reasons for proposing to disapprove section 101.222(h) above. Since section 101.222(j) is not severable from section 101.222(h), which we are disapproving, we are disapproving section 101.222(j).

In light of the comments received on this action, we provide in more detail here our rationale for our final action

[3] Furthermore, although not included as part of the approved SIP, the title V deviation reporting requirements provide significant information to the State (which is also available to EPA and the public) regarding emission event violations.

[4] An affirmative defense is defined, in the context of an enforcement proceeding, as a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding. By demonstrating that the elements of an affirmative defense have been met, a source may avoid a civil penalty, but not injunctive relief.

[5] Although we interpret the Act to allow for an affirmative defense for excess emissions during startup and shutdown, we note that the current Texas rule includes a defect which could prevent our approval of this provision in the future if submitted in the same form. Specifically, instead of identifying the criteria a source must meet to assert an affirmative defense for planned activities, the Texas rule cross-references the criteria that apply for unplanned events. Thus, sources might argue that many of the criteria would not apply and would not need to be proved when asserting an affirmative defense. The criteria that a source must prove in asserting a defense are critical for ensuring that the defense will not be abused. Thus, any future rule submitted by the State must be clear about the applicable criteria that apply and those criteria must ensure that, among other things, excess emissions were not due to inadequate design, that the facility was operated consistent with good practices for minimizing emissions and the frequency and duration of operation in startup or shutdown mode was minimized. *See* the 1999 Policy at 6.

disapproving that provision. EPA's interpretation of the CAA is that it is not appropriate for SIPs to exempt periods of startup, shutdown, maintenance or malfunction from compliance with applicable emission limits. This is supported by the definition of "emission limitation" in section 302(k) of the Act, which requires emissions be limited on a "continuous" basis. In addition, we have noted that because SIPs are used to demonstrate how an area will attain and maintain health-based standards, it is not appropriate to exempt any periods of operation from compliance with the limits relied on to demonstrate that public health will be protected. We recognize that courts have disagreed whether it may be appropriate to provide for certain exceptions from compliance with emission limits when setting technology based standards. *Mossville Environmental Action Now* v. *EPA,* 370 F.3d 1232, 1242 (DC Cir. 2004) (upholding, as reasonable, standards that had factored in variability of emissions under all operating conditions). *See, Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) ("In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation."). Although one might argue that it is appropriate to account for such variability in technology-based standards, EPA's longstanding position has been that it is not appropriate to provide exemptions from compliance with emission limits in SIPs that are developed for the purpose of demonstrating how to attain and maintain the public health-based NAAQS. For purposes of demonstrating attainment and maintenance, States assume source compliance with emission limitations at all times. Thus, broad provisions that would exempt compliance during periods of startup, shutdown, malfunction and/or maintenance would undermine the integrity of the SIP. Recently, in the context of the CAA section 112 program regulating emissions of hazardous air pollutants, the court in *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), *cert. denied, 130 S. Ct. 1735 (U.S. 2010),* held that the CAA section 302(k) definition of emission standard or emission limitation in conjunction with the provisions of section 112 require continuous compliance with section 112-compliant standards. We believe that this case supports EPA's long-standing interpretation in the SIP context that it is inappropriate to exempt periods of startup, shutdown and malfunction and/or maintenance from compliance with emission limitations.

Although EPA has long interpreted the CAA to bar States from including exemptions from compliance with applicable emission limitations during periods of startup, shutdown, maintenance and malfunction, we have also recognized that sources may, despite good practices, be unable to meet emission limitations during periods of startup and shutdown and, that despite good operating practices, sources may suffer a malfunction due to events beyond the control of the owner or operator. EPA's early policies provided that these events should be addressed through enforcement discretion. *See* the memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions" (1982 Policy); and EPA's clarification to the above policy memorandum dated February 15, 1983, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation (1983 Policy). Later, in practice, and then as reflected in a 1999 Policy memorandum, EPA adopted an interpretation of the Act that would allow sources to assert an affirmative defense to periods of excess emissions during startup, shutdown and malfunction in an enforcement action for penalties, though not in an action for injunctive relief. As explained in the 1999 Policy, in the course of an enforcement action for penalties, a source could assert the affirmative defense and the burden would be on the source to prove enumerated factors, including that the period of excess emissions was minimized to the extent practicable and that the emissions were not due to faulty operations or disrepair of equipment.[6]

The criteria a source must prove when asserting an affirmative defense, as provided in the 1999 Policy, are consistent with the criteria identified in section 113(e) of the CAA that the courts and EPA may consider in determining whether to assess a penalty (and, if so, what amount) in the context of an enforcement action. Our goal in developing the criteria recommended in the 1999 Policy was to provide an avenue for relief from penalties for actions that are outside the control of an owner or operator who is making best efforts to operate consistent with applicable requirements. In other words, we believe it is important to tailor the factors so that they encourage sources to make best efforts to comply with emission limits that are intended to bring an area into attainment with and to maintain health-based air quality standards. We believe, however, that maintenance activities can and should be scheduled during process shutdowns. To the extent they are not, the source should ensure that control equipment can be consistently effective during maintenance activities. Thus, we do not believe that an affirmative defense for excess emissions during planned maintenance is appropriate since there should not be circumstances during which a source should exceed emission limits during maintenance.[7] Although we do not believe it is appropriate to approve an affirmative defense for excess emissions during maintenance into the SIP, section 113(e) of the Act still provides that a source may raise factors in an enforcement action that the Administrator or a court may consider in determining an appropriate penalty.

We note that States are not required to provide an affirmative defense approach, but, if they choose to do so, EPA will evaluate the State's submitted rules to ensure they meet the requirements of the Act as interpreted by EPA through the policy and guidance documents listed in Section B of the May 13, 2010 proposal, including EPA's 1999 Policy. In order to be consistent with the Act, an affirmative defense must be narrowly-tailored in order not to undermine the enforceability of the SIP. An effective enforcement program must be able to collect penalties to deter avoidable violations. Thus, the SIP

[6] More recently, and consistent with an additional approach discussed in the 1999 Policy (at 4–5), with respect to planned startup and shutdown events, EPA has encouraged States to address planned startup and shutdown in their SIPs. For those sources and source categories where compliance with the applicable limit is not possible during startup and/or shutdown, the State should develop alternative, applicable emission limits for such events, which they can consider in SIPs demonstrating attainment and maintenance of the NAAQS. As part of its justification of the SIP revision and in order to address potential impacts on attainment and maintenance of the NAAQS, the State should analyze the impact of the potential worst-case emissions that could be anticipated to occur during startup and shutdown.

[7] We note that if excess emissions occur during maintenance and because of a malfunction, the affirmative defense for malfunctions might be available to the source for such maintenance activity as part of the broader malfunction event.

should only provide the defense for circumstances where it is infeasible to meet the applicable limit and the criteria that the source must prove should ensure that the source has made all reasonable efforts to comply. Otherwise, such an approach could undermine the enforceability and attainment demonstration requirements of the Act. Because, as discussed above, we do not believe that it is infeasible for sources to meet applicable limits during planned maintenance, we are disapproving section 101.222(h).[8]

We further note, as provided in more detail in our proposed rule, that severing the unapprovable provisions (Sections 101.222(h), (i), and (j)) of the rule does not affect the effectiveness or the enforceability of the remaining portions of the rule that we are approving in this final action. Section D of our May 13, 2010 (75 FR 26894) proposal stated the reasons for approving portions of the submittal, and Section E (75 FR 26896) explained why we proposed disapproval of sections 101.222(h), (i), and (j). As explained in the proposed rule at 75 FR 26893, we believe sections 101.222(h), 101.222(i), and 101.222(j) are severable from, and independent of, the remainder of the January 26, 2006 SIP submittal. Disapproving these provisions does not make the portions of the submission that we are proposing to approve more stringent than the State intended. The provisions being disapproved address completely separate activities when excess emissions occur (planned activities) from those addressed by the provisions being approved (unplanned activities). The approved provisions will provide the exact limited relief intended by the State for sources covered by those provisions: A source may assert an affirmative defense in an action seeking penalties for a violation of an applicable emission limit during unplanned startup, shutdown, malfunction or maintenance activity. In asserting the affirmative defense, the source has the burden to prove certain criteria have been met. EPA's action disapproving similar relief for excess emissions during planned activities does not affect the stringency of the defense being approved for periods of excess emissions during unplanned activities.

[8] To the extent there may be a unique situation where maintenance cannot be performed at a time and in a manner that would ensure compliance with an applicable emission limitation, the State can consider establishing alternative limits that would apply during such events. However, such a situation does not support the creation of an affirmative defense that would apply more broadly to a variety of maintenance activities.

V. What are the public comments and EPA's responses to them?

We have evaluated the comments received on the proposed rule and, as provided above, have determined to take final action consistent with our proposal, with the exception that we are not taking final action on two provisions withdrawn by the State. A summary of the comments and our responses are provided below.

A. General Comments of Support

Comments: Two commenters expressed support for EPA's proposed approval of those sections of the January 23, 2006 SIP submittal, identified with "proposed approval" in the above Table. Many other commenters requested that EPA approve not only those sections identified with "proposed approval" in the above Table but also the entire January 23, 2006 SIP submittal. Another commenter expressed support for EPA's proposal to disapprove certain sections of the January 23, 2006 SIP submittal, and requested EPA disapprove the entire January 23, 2010 SIP submittal as it relates to affirmative defenses.

Response: EPA appreciates the support of the commenters who agree with EPA's proposed action. We have also considered the concerns expressed by the commenters who disagreed with all or a portion of EPA's proposed action, as discussed below in response to the commenters' more detailed comments.

B. Comments Related to the SIP Stringency and CAA Section 110(l) Requirements

Comments: Several commenters characterized the January 23, 2006 SIP submittal as substituting a more stringent affirmative defense for a pre-existing SIP-approved automatic exemption for excess emissions, or that the submittal eliminates an exemption or affirmative defense. Other commenters expressed concern that EPA's partial approval would unlawfully increase the stringency of the Texas SIP. One commenter asserted that partial disapproval would expose sources to civil penalties. Another set of commenters stated that EPA's proposed disapproval is contrary to section 110(l) of the Act and an unmerited expansion of a solution to the problem of historically unauthorized emissions. Two commenters stated that section 101.222(h) incorporates by reference section 101.222(c)(9) which means that excess emissions would not be eligible for an affirmative defense if such events interfere with attainment and maintenance of the NAAQS. They argue that EPA has failed to show how the affirmative defense would interfere with the attainment and maintenance of the NAAQS. One commenter noted improvements to the air quality in Texas over the last 10 years despite increases in population, and claims that the affirmative defense provisions in the January 23, 2006 SIP submittal require a demonstration that the covered emissions did not cause NAAQS exceedances.

Response: We disagree that our action increases the stringency of the approved SIP. The federally-approved Texas SIP does not provide either an exemption for or an affirmative defense to excess emissions occurring during periods of planned or unplanned startup, shutdown, maintenance, or malfunction activities. Previously approved provisions that addressed excess emissions expired from the SIP on their own terms as of July 1, 2006. Thus, under the federally-approved Texas SIP, excess emissions are violations of the applicable emission limits, and the SIP does not include any provision for asserting an affirmative defense in response to an enforcement proceeding for excess emissions during planned or unplanned maintenance, startup, shutdown or malfunction. Thus, the action we are finalizing in this rulemaking—approving an affirmative defense available in an enforcement action for penalties for periods of excess emissions during unplanned maintenance, startup, shutdown activities (including opacity events)—does not make the approved SIP more stringent. Rather, it provides an avenue of limited relief in an action for penalties for a source that violates an applicable emission limit and can prove certain criteria have been met. Thus, the comments asserting that the partial disapproval would expose sources to penalties are incorrect, since excess emissions are violations of the existing SIP and the existing SIP does not contain affirmative defense provisions that provide relief in an action for penalties for any period of excess emissions.

In response to the commenter's concern that our disapproval would increase the stringency of the Texas SIP, we note further that section 110(k)(3) of the CAA provides that the administrator can approve a plan in part and disapprove a plan in part. A partial approval/partial disapproval action is permissible when portions of the plan are separable. "Separable" means the approved portions of the SIP revision should not result in the approved portions of the SIP submission being more stringent than the State would

have anticipated. The State's submitted provisions for an affirmative defense for excess emissions from unplanned maintenance, startup, or shutdown activities are separable from the provisions of the rule that we are disapproving. Our action has no effect on the stringency of the approved portions of the rule. The portions of the rule we are approving today that provide for an affirmative defense for excess emissions during unplanned maintenance, startup, or shutdown, and malfunction activities (as identified with "proposed approval" in the above Table) will operate exactly the same way under the federally approved SIP as they do under state law.

With respect to EPA's application of section 110(l) of the CAA in this rulemaking action, we agree that section 110(l) provides that EPA cannot approve a proposed SIP revision that would interfere with attainment or maintenance of the NAAQS. In addition, it provides that EPA cannot approve a SIP revision that would interfere with any other applicable requirement of the Act. Section 110(l) applies to this action, since the action is one that revises the existing SIP. We note that the portions of the January 23, 2006 SIP submittal we are approving do not modify any applicable emission limitation, nor do they authorize violations of applicable emission limitations. All emissions in excess of the applicable emission limits are considered violations. The affirmative defense neither authorizes nor condones such events and it is narrowly tailored consistent with our interpretation that such a defense not undermine the enforcement or attainment provisions of the Act. Thus, we have concluded that the affirmative defense provisions we are approving into the SIP will not interfere with attainment or maintenance of the NAAQS and, as explained in more detail above, such provisions are consistent with other applicable requirements of the Act. We further note that the affirmative defense is limited to actions for penalties and may not apply to actions for injunctive relief. Thus, to the extent the State, EPA or a private citizen is concerned that excess emissions might be causing or contributing to a violation of the NAAQS, they can seek a court order to abate the activity. We disagree with those commenters who suggest that in order for EPA to disapprove a SIP revision, section 110(l) requires EPA to demonstrate that there will be a violation of the NAAQS if EPA approves the SIP revision. As an initial matter, we note that the language in section 110(l) provides that EPA must disapprove a SIP revision if it "would interfere with any applicable requirement concerning attainment." This is quite distinct from an obligation to prove that a violation will occur. We believe that provisions that provide relief from penalties should be limited to circumstances where sources are unable to comply despite best efforts and, as explained above, we believe that maintenance activities can be scheduled at times that would avoid the occurrence of excess emissions. We further note that section 110(l) also provides that EPA may not approve a SIP revision that interferes with any applicable requirement of the Act. As explained more fully above, because maintenance activities can be planned to occur during planned outages, we do not believe that an affirmative defense for penalties is appropriate for excess emissions occurring during such planned maintenance activities. Allowing such a provision would undermine the enforceability, as well as the attainment, requirements of the Act.

Comment: One commenter stated that the New Mexico SIP provides for an affirmative defense to maintenance-related activities.

Response: Our review of a SIP revision submittal is governed by section 110(l) of the Act. Assuming for the moment that the New Mexico SIP contained a provision identical to that we are disapproving today for Texas, section 110(l) would still bar our approval of the rule into the Texas SIP for the reasons provided previously. The fact that we may have erred in approving a SIP for one State does not support an argument that we should make the same error with respect to a different State. In any event, we note that the commenter does not point to a specific provision in the New Mexico SIP to support its argument, and we are unaware of any provision in the New Mexico SIP that provides an affirmative defense for excess emissions during planned maintenance.

Comment: Other commenters claim that EPA's disapproval would create inequities between Texas sources and sources in other states whose programs contain affirmative defenses for startup or shutdown activities.

Response: We disagree. The commenters are referring to perceived inequities which are attributable to TCEQ's action combining a "planned maintenance" activity in section 101.222(h) with a "startup" or "shutdown" activity, leaving EPA no recourse but to partially disapprove the January 23, 2006 SIP submittal.

C. Comments Related to Texas' Phase Out Approach and Disapproval Effects

Comments: Some commenters characterized the January 23, 2006 SIP submittal as TCEQ's phase-out of a regulatory scheme in which excess emissions during planned maintenance, startup, or shutdown (MSS) activities were exempt from compliance to one where such emissions would become authorized under a permit. Other commenters claimed that EPA's disagreement with the Texas approach was not adequately explained. These commenters stated that the point of difference between EPA and TCEQ must have originated from the procedures and timing TCEQ is providing to affect its phase-out. As a result, EPA's partial disapproval would disrupt an orderly transition resulting in negative impacts (including interstate inequities) at the expense of Texas facilities and causing companies to forgo preventative maintenance. TCEQ commented on the reasons supporting its phase-out approach (which includes the categories of sources likely to report the majority of excess emissions, the degree of complexity of processing of permit applications for planned MSS activities for these categories, and facilitating the orderly/temporary transition to appropriate permit limits and requirements) and its plan to exercise enforcement discretion when reviewing excess emissions from planned MSS activities that fail to meet the schedule set forth in 30 TAC § 101.222(h). One commenter asserted that TCEQ's provision for an affirmative defense to emissions from planned maintenance activities is a direct response to EPA's comments to TCEQ.

Response: As an initial matter, it is important to understand what the commenters are referring to. The January 23, 2006 SIP submittal submitted by the State relates to a broader process envisioned by the State where it would have provisions in the Texas SIP that would address excess emissions during unplanned and planned MSS and malfunctions activities and also establish a process and schedule for addressing emissions from planned MSS for sources through a New Source Review (NSR) SIP permitting process. Pursuant to the January 23, 2006 SIP submittal, as sources apply for and receive NSR SIP permits that authorize emission limitations for the emissions occurring during planned MSS activities, then under the State's submitted transition process, the affirmative defense provisions addressing excess emissions during periods of planned MSS would

no longer apply upon the issuance of the NSR SIP permit. Instead, the terms and conditions, including the newly imposed emission limitations for the planned MSS emissions, of the NSR SIP permit would apply.

EPA's role in evaluating a proposed SIP revision is to make sure that the revision would not potentially interfere with attainment and maintenance of the NAAQS or any other applicable requirement of the Act. Thus, we must determine whether the State's regulatory choices are consistent with the federal Clean Air Act, including the obligation to attain and maintain the NAAQS and the ability to adequately enforce the obligations in the approved SIP. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). We explain our reasons for proposing disapproval of sections 101.222(h), (i), and (j) in section E of the May 13, 2009 proposal (75 FR 26892) and provide more detail above.

The commenters are incorrect that our disapproval of the three provisions is based on a "difference" with Texas over their approach to address periods of excess emissions as part of a broader permitting effort. The basis for our disapproval is explained above and is separate from any concern that we may have with Texas' overall approach to addressing excess emissions through permitting. The State's choice to create a permitting process to address excess emissions during planned maintenance, startup, or shutdown activities does not justify an approval into the SIP—even for a temporary period of time—a provision that we believe is inconsistent with the Act. We agree with the State that it is appropriate to consider appropriate emission limits that would apply during periods of planned startup and shutdown and to incorporate them into NSR SIP permits. As provided in the 1999 Policy, where it is not possible for sources to comply with applicable emission limits during periods of startup and shutdown, it is appropriate for the State to develop alternative emission limits that would apply during such periods. This can include the State using its EPA-approved NSR SIP requirements. However, we note that the State cannot issue any NSR SIP permit that has a less stringent emission limit than already is contained in the approved SIP. For example, the State cannot issue a NSR SIP permit that has less stringent Volatile Organic Compounds limits than those in Chapter 115 as approved into the Texas SIP, or less stringent Oxides of Nitrogen (NO_X) limits in Chapter 117 as approved into the Texas SIP. The State must issue a NSR SIP permit that meets all applicable requirements of the Texas SIP. If the State wishes to issue a NSR SIP permit that does not meet the applicable requirements of the Texas SIP, then any such alternative limits would need to be submitted to EPA for approval as a source-specific revision to the SIP, before they would modify the federally applicable emission limits in the approved SIP.

We disagree with the commenters who suggest that the partial disapproval will disrupt the orderly transition contemplated by Texas in which sources will address excess emissions in permits. As we have noted before, the current SIP does not provide an affirmative defense for any period of excess emissions. Thus, our disapproval of the provisions providing an affirmative defense for excess emissions during periods of planned maintenance, startup, or shutdown activities does not affect the status quo.

The commenters also appear to be asserting that EPA's disapproval of the submitted affirmative defense provision for excess emissions during planned maintenance, startup, and shutdown activities (which would apply in the period before a specific source applies for and receives a NSR SIP permit) would unfairly disadvantage sources. To the extent that the commenters are concerned that an inequity is created by Texas' phased-out approach for addressing periods of excess emissions through the permitting process, that inequity is created by the system developed by the State, not by EPA's partial disapproval of the SIP. These commenters appear to assume that EPA's approval of the submitted affirmative defense provision for excess emissions during planned MSS activities is needed only as a "temporary" measure until the State finishes issuing all affected sources their NSR SIP permits containing emissions limitations for these types of emissions. However, the State-issued NSR SIP permits must meet all applicable requirements under the EPA-approved Texas SIP. Should the State wish to issue a NSR SIP permit addressing periods of excess emissions during planned MSS activities that will not meet all of the requirements in the Texas SIP, then that particular NSR SIP permit must be submitted by the State to EPA for approval as a source-specific SIP revision.

The comment claiming that TCEQ added an affirmative defense for planned maintenance based on a comment from EPA provides no detail. We are unaware of any statement that we made that would have encouraged the State to add such a provision and the commenter does not reference any specific comment from EPA. Regardless of whether any statements were made, an affirmative defense for planned maintenance is not appropriate under the Act. Because the affirmative defense for planned maintenance is not severable from that for planned startup or shutdown, we are disapproving in whole the provision (section 101.222(h)) that establishes the affirmative defense for planned maintenance, startup, or shutdown activities.

D. Comments Related to NAAQS, Air Quality, and State Control Options

Comments: Some commenters contend that EPA's proposed disapproval is contrary to the cooperative federalism principles in the Act, referencing *CleanCOALition* v. *TXU Power,* 536 F.3d 469, 471 (5th Cir. 2008) and *Fla. Power & Light Co.* v. *Costle,* 650 F.2d 579, 581 (5th Cir. 1981), and amounts to second guessing Texas' reasonable choices for how to achieve the NAAQS, including opacity limits in 30 TAC Chapter 111. These commenters continue by stating that EPA's disapproval would lead to interstate inequities and remove permitting incentives.

Response: Under the NAAQS provisions of the CAA, air pollution control at its source is the primary responsibility of States and local governments. EPA is respectful of the Act and cognizant of the cooperative federalism principle contained therein. However, while the Act does give States a fair degree of latitude in choosing the mix of controls necessary to meet and maintain the NAAQS, it also places some limits on the choices States can make. EPA's role is to ensure that the SIP submittal is consistent with the CAA. Any SIP submittal, including revisions to 30 TAC Chapter 101, must adhere to applicable requirements of the federal CAA, including the obligation to provide for attainment and maintenance of the NAAQS and to ensure that the SIP may be adequately enforced. EPA's statutory responsibilities in reviewing a SIP is to ensure it meets the requirements of the Act, including those in section 110(a)(2) and section 172(c). As explained in the May 13, 2010 proposal and above, as part of EPA's review, we determined that the provision providing for an affirmative defense for excess emissions during planned maintenance is inconsistent with the CAA.

With respect to the comments that suggest that our proposed disapproval will lead to removal of permitting incentives, we disagree. The submitted transition permitting process is the State's choice for how to handle excess

emissions during planned maintenance, startup, or shutdown activities. Under the State's chosen transition process, after a source receives a NSR SIP permit that establishes emission limitations upon the planned maintenance, startup, or shutdown emissions, then the source no longer can assert an affirmative defense for excess emissions during planned MSS activities. The source can choose between a potential enforcement action (and whether it will prevail in its assertion of affirmative defense) or obtaining a NSR SIP permit that sets limits on the excess emissions during planned maintenance, startup, or shutdown activities. Thus, we do not see how the presence or absence of an affirmative defense for excess emissions during planned maintenance, startup, or shutdown activities in the SIP will affect the choice a source might make regarding permitting. Furthermore, we disagree with the comment that our disapproval will create interstate inequities because other SIPs contain affirmative defenses for excess emissions during planned maintenance activities. The commenter references no specific SIPs that contain provisions similar to what we are disapproving in this action. As stated above, our review of a SIP revision submittal is governed by section 110(l) of the Act; to the extent we may have erred in approving an affirmative defense for excess emissions during planned maintenance into a SIP for one State does not support an argument that we should make the same error with respect to a different State. Within Texas, however, we note that based upon our disapproval, an affirmative defense for excess emissions during periods of planned MSS would be equally unavailable to any source. For discussion concerning opacity limits in 30 TAC Chapter 111, see section H of this document.

Comment: One commenter notes the similarities between the proposed SIP revisions and the New Source Performance Standards (NSPS) requirements for SSM events.

Response: As an initial matter, we note that there are several differences between the proposed SIP revision and the NSPS requirements. First, the NSPS provisions in 40 CFR 60.11 do not establish an affirmative defense, but rather exempt periods of excess emissions during startup, shutdown and malfunction from compliance with underlying emissions limits, unless otherwise specified. The provision does not establish an affirmative defense nor does it address periods of maintenance. Even assuming the NSPS provisions were similar, however, we note that the Agency has historically allowed more flexibility in addressing emissions during startup, shutdown and malfunction for technology-driven regulations, such as the NSPS. SIPs, however, are designed for the purpose of attaining and maintaining the health-protective NAAQS, and the Agency has consistently taken the position that broad exemptions from compliance with applicable emission limits during SSM are not appropriate because they cannot be adequately accounted for in plans to demonstrate attainment and maintenance of the NAAQS. In addition to the difficulties States would encounter in predicting how many sources may be exceeding underlying limits at any one time, for how long, and by how much, such provisions undermine incentives for sources to operate using sound practices. In order to address the limits of technology for standards included in plans to attain the health-based NAAQS, we have urged States to set alternative emission limits that apply during periods of startup and shutdown where compliance with the otherwise applicable emission limits is impossible; to use enforcement discretion; or to establish an affirmative defense that is limited to actions for penalties. As explained above, however, we do not believe that it is appropriate to establish an affirmative defense for excess emissions during planned maintenance activities because we believe that these activities can be anticipated and scheduled during planned outages.

Comment: One comment suggests that providing affirmative defenses for startup, shutdown, and malfunction (SSM) could result in emissions contributing to ozone NAAQS exceedances. The same commenter also states that flaring and upsets could contribute to ozone nonattainment.

Response: We agree with the comments that flaring and upset events could contribute to ozone NAAQS nonattainment. Excess emissions related to flaring events are unauthorized emissions and thus are considered a violation of the applicable emission limit. TCEQ's ozone NAAQS control strategies including controls of flares are addressed in the substantive control requirement provisions of the SIPs as part of ozone attainment demonstration plans and were not specifically addressed as part of the emission event provisions in the 30 TAC Chapter 101 rules of the Texas SIP, including the January 23, 2006 SIP submittal. The rule on which we are taking action here does not excuse or authorize flaring events due to startup, shutdown, malfunction or maintenance. To the extent a flaring event causes excess emissions during a period of unplanned startup, shutdown or maintenance, the rule would provide limited relief to the source in an action for penalties, assuming the source could prove certain factors had been met; however, it does not authorize or excuse those excess emissions. Thus, our approval of the affirmative defense in an action for penalties for excess emissions during unplanned startup, shutdown or maintenance will not interfere with attainment or maintenance of the ozone NAAQS. We note that to the extent a violation of the NAAQS is caused by a violation of an emission limit in a SIP, the most effective means to ensure limited harm to ambient air quality from the exceedance would be an action for injunctive relief. That remedy is unaffected by our approval of the affirmative defense, which is limited to actions for penalties.

E. Comments Related to Technical Infeasibility and Disapproval Effects

Comment: Several commenters expressed concern that it is not technically feasible to meet certain emission limitations (including opacity limits) at all times during planned maintenance, startup, or shutdown activities, and that the proposed partial disapproval could lead to less effective and less safe operation of environmental control equipment, including sources that use Electrostatic Precipitators (ESPs) and Selective Catalytic Reduction as emissions control devices. For example, several commenters noted that during maintenance of a boiler at a coal-fired power plant, fans must remain on and the ESPs will not be energized, leading to excess emissions. These commenters claim that EPA's partial disapproval will force facilities to forgo preventative and proactive maintenance until permits can be issued for these activities. Other commenters note that EPA's NSPS regulations at 40 CFR 60.11(c) for coal-fired power plants provide exceptions for excess opacity emissions during planned startup, shutdown, and malfunction activities and that opacity limits in the Texas SIP were based on normal operations.

Response: As noted earlier, since July 1, 2006, no affirmative defense for excess emissions has been available in the federally-approved Texas SIP. Thus, our disapproval of the affirmative defense provision for periods of planned maintenance, startup, or shutdown activities will not change the status quo that has applied for over four years under the Texas SIP. We can understand that there may be excess opacity emissions in certain situations from operation of power generators equipped with ESPs. Under the current SIP these

excess opacity events would be violations, and yet power plants have been able to maintain and generate reliable power to their customers during this period. The commenters did not refute this. Thus, we do not believe our action to disapprove the affirmative defense for planned maintenance, startup, or shutdown activities where such defense has not been available since 2006, should jeopardize the safe and effective operation of the generators as several commenters claim. For this same reason, we also believe that our actions will not lead to facilities being forced to forego proactive maintenance when operated by trained and knowledgeable personnel.

The NSPS regulation at 40 CFR 60.11(c) does provide exceptions from compliance with underlying opacity limits during startup, shutdown and malfunction, but does not provide similar relief for periods of maintenance, as suggested by the commenter. As provided above, we have historically provided more leeway for compliance with technology-based standards than for health-based programs such as the NAAQS. Thus, the provisions adopted for purposes of the NSPS are not relevant to our action disapproving an affirmative defense for excess emissions during planned maintenance as part of a SIP.

F. Comments Related to EPA Guidance and Policies and Disapproval Effects

Comments: Some commenters state that the affirmative defense provisions in the January 23, 2006 SIP submittal are consistent with the EPA guidance documents referenced in the May 13, 2010 proposal, and that EPA's distinction between unplanned and planned startup or shutdown activity has no factual basis and is arbitrary and capricious.

Response: We disagree. The January 23, 2006 SIP submittal contains affirmative defense provisions for planned maintenance activities. As discussed previously, EPA's interpretation of the Act is that it would be inappropriate to provide an affirmative defense to an action for penalties related to excess emissions occurring during planned maintenance and that EPA's approval of such a defense into a SIP would be inconsistent with the CAA and EPA guidance. With respect to the comment concerning EPA's distinction between planned and unplanned startup or shutdown activities, we note that *unplanned* startup or shutdown activity is specifically defined in the Texas rules as nonroutine, and unpredictable. As such it is functionally equivalent to a malfunction. Therefore the distinction between planned and unplanned startup and shutdown is not arbitrary. EPA would allow a State to create a limited affirmative defense for excess emissions occurring during planned and unplanned startup and shutdown activities. However, with respect to the *planned* startup or shutdown provisions of section 101.222(h), the cross-reference of several criteria in section 101.222(c) apply only to *unplanned* activities which results in the failure to include all the necessary criteria for *planned* startup or shutdown activities, as discussed more fully below.

Comment: One commenter asserts that the affirmative defense provided in section 101.222(h) for excess emissions during planned maintenance, startup or shutdown activities should be approved because it incorporates by reference all the criteria set forth in section 101.222(c).

Response: As provided above, EPA cannot approve the submitted section 101.222(h) because it provides for an affirmative defense for excess emissions during planned maintenance activities into the Texas SIP since we believe such approval would be inconsistent with the CAA and EPA guidance. Because the portions of section 101.222(h) that provide an affirmative defense for excess emissions during planned startup and shutdown are not severable from the provision for maintenance, those provisions must also be disapproved.

While the commenter is correct that the submitted section 101.222(h) incorporates by reference the affirmative defense criteria set forth in the submitted section 101.222(c), such cross-referencing is problematic. Many of the criteria listed in submitted section 101.222(c)—namely, (c)(2), (c)(3), (c)(4), (c)(6), and (c)(8)—specifically state that they apply to "emissions from an *unplanned* maintenance, startup, or shutdown activity (emphasis added)." As stated in footnote 5 above, a source claiming an affirmative defense in an action for excess emissions during a planned startup or shutdown activity could claim that the criteria listed in section 101.222(c)(2), (c)(3), (c)(4), (c)(6), and (c)(8) do not apply. In the absence of the appropriate criteria for planned startup or shutdown activities, EPA cannot approve the submitted section 101.222(h) as part of the Texas SIP.

Comment: As noted by another commenter the proposed disapproval of section 101.222(h) could be interpreted as EPA's belief that it cannot approve any affirmative defense for excess emissions from planned startup or shutdown activities.

Response: As noted above and in footnote 5, we interpret the CAA to allow EPA to approve a SIP revision submittal from a State that provides an affirmative defense for excess emissions during planned startup or shutdown activities, but the inclusion of planned maintenance activities and the failure to include appropriate criteria (due to improper cross-referencing) for planned startup and shutdown activities renders the submitted section 101.222(h) unapprovable.

Comments: One commenter states that EPA's May 13, 2010 notice provides no basis for the proposed disapproval of an affirmative defense for excess emissions during planned maintenance, where a source can demonstrate that such emissions could not be avoided.

Response: We disagree. The May 13, 2010 proposal to disapprove section 101.222(h) specifically states that the source or operator should be able to plan maintenance that might otherwise lead to excess emissions to coincide with maintenance or production equipment or other facility shutdowns. EPA has determined that it is inappropriate to provide an affirmative defense for excess emissions resulting from planned maintenance activities. With respect to other planned activities, we noted that for those sources and source categories where compliance is not possible, the State should develop alternative, applicable emission limits for such events, which they can consider in SIPs demonstrating attainment and maintenance of the NAAQS, rather than establishing an affirmative defense for such emission events. *See* 75 FR 26896–7.

Comment: Other commenters claim that disapproving an affirmative defense during the period of transition to permitting planned maintenance, startup, or shutdown activities would create new liabilities and encourage arbitrary enforcement.

Response: We disagree. For the reasons provided above, EPA is disapproving sections 101.222(h), (i) and (j) because they are not consistent with the CAA, as interpreted by EPA through policy and guidance. For the reasons provided in the other responses, we do not believe that our action disapproving these three sections creates new liabilities. The existing SIP has not included an affirmative defense for excess emissions since June 30, 2006. Under the approved SIP, all periods of excess emissions are violations and the submitted SIP revisions that we are approving do not delineate when and how the state, EPA or a citizen chooses which sources and events to enforce against. We disagree

that our disapproval of section 101.222(h) will encourage arbitrary enforcement. Enforcement actions for excess emissions violations from planned maintenance, startup or shutdown activities will be subject to enforcement discretion. Enforcement discretion does not mean arbitrary enforcement.

Comment: Another commenter claims that a conditional approval would be more appropriate to address EPA's concerns with the January 23, 2006 SIP submittal.

Response: To propose conditional approval of a provision of a SIP revision submittal, EPA would need a State's written commitment to submit a SIP revision that corrects the deficiency no later than one year after a conditional approval and that justifies the timeframe needed to address the identified deficiencies in the SIP submittal; Texas did not provide a commitment that would have supported a proposed conditional approval.

Comment: One commenter suggests that the requirements associated with scheduled maintenance under section 101.211 are more stringent than EPA's guidance on excess emissions because the Texas rule imposes additional requirements, such as the reporting of maintenance, startup, or shutdown activities that are expected to exceed a reportable quantity (RQ) in advance of the activities.

Response: Since EPA's position is that excess emissions during planned maintenance activities cannot be afforded an affirmative defense, it is not relevant whether the submitted 101.211 may or may not be more stringent in terms of reporting requirements.

G. Comments Related to Procedural Aspects of the Rulemaking

Comments: One commenter questions EPA's failure to justify its delay in responding to the January 23, 2006 SIP submittal and the limited amount of time to review the proposed disapproval in the May 13, 2010 notice. Another commenter asserts that EPA failed to comply with its policy for Regional Consistency Review for SIP revisions and also asserts that EPA's disapproval is procedurally flawed because the May 13, 2010 proposal was signed by the Deputy Regional Administrator and not the Regional Administrator.

Response: Questions related to EPA's delay in acting on the January 23, 2006 SIP submittal were resolved by settlement agreement filed with the court in *BCCA Appeal Group et al.* v. *EPA* (Case No. 3–08CV1491–G, N.D. Tex.). Under the settlement agreement EPA agreed to take final action on the January 23, 2006 SIP submission by October 31, 2010.

We disagree with the comments suggesting that the comment period was not sufficient. In the initial proposed rule, EPA provided a 30-day comment period on the proposed action. This is consistent with the time period that EPA typically provides for actions on SIPs. Furthermore, EPA extended the comment period for an additional 14 days.

We also disagree with the commenters that suggest that EPA did not comply with internal procedures with respect to review of the SIP. The proposed disapproval is consistent with EPA's longstanding interpretation of the Act and does not deviate from EPA's existing practices and policies. Therefore, there was no need to initiate a SIP consistency process for this action, and the commenter's assertion for a need to initiate a SIP consistency process is misplaced.

Finally, the May 13, 2010 (75 FR 26892) proposal was signed by the Acting Regional Administrator, as provided by the Region 6 Order R6–1110.11, dated April 30, 2002. We have made this particular Order available for public inspection in the docket identified as EPA–R06–OAR–2006–0132.

H. Comments Related to Interpretation of 30 TAC 101.221(d)

Comments: One commenter asserts that the exemption provision of section 101.221(d) of the January 23, 2006 SIP submittal should be interpreted to apply to the opacity requirements of 30 TAC section 111.111, while another commenter requests clarification that the exemption provision in section 101.221(d) of the January 23, 2006 SIP submittal be interpreted to exclude federally approved SIP requirements. The commenter claims that TCEQ's and EPA's interpretation of that section is incorrect.

Response: 30 TAC section 111.111 entitled "Requirements for Specified Sources" was adopted by TACB on June 18, 1993, and approved by EPA as a revision to the Texas SIP on May 8, 1996 (61 FR 20734). At that time, it became federally enforceable. Therefore, the requirements in the SIP rule found at 30 TAC section 111.111 are "federal requirements." Section 101.221(d) plainly states that TCEQ will not exempt sources from complying with any "federal requirements." This position is also consistent with the April 17, 2007 letter from John Steib, Deputy Director, TCEQ Office of Compliance and Enforcement to EPA Region 6, in which the State confirmed that the term "federal requirements" in 30 TAC 101.221(d) includes any requirement in the federally-approved SIP. In section D of our May 13, 2010 proposal, we stated that new section 101.221 (Operational Requirements) requires that no exemptions can be authorized by the TCEQ for any federal requirements to maintain air pollution control equipment, including requirements such as NSPS or National Emissions Standards for Hazardous Air Pollutants (NESHAP) or requirements approved into the SIP. Texas confirmed this interpretation and, therefore, the State may not exempt a source from complying with any requirement of the federally-approved SIP. Any action to modify a state-adopted requirement of the SIP would not modify the federally-enforceable obligation under the SIP unless and until it is approved by EPA as a SIP revision. Moreover, to the extent a State includes federally-promulgated requirements, such as NSPS or NESHAP into the SIP, the State does not have authority to modify such requirements. EPA's long-standing position has been that States may not include in their SIPs provisions that allow a State Director or Board to modify the federally-applicable terms of the SIP without review and approval by EPA. This is because the emission reduction requirements in the SIP are relied on to attain and maintain the NAAQS, and exemptions or modifications to those requirements could undermine this fundamental purpose of the SIP.

I. Comments Related to Potential Enforcement Actions

Comments: Several commenters express a belief that EPA's proposed disapproval of sections 101.222(h), (i), and (j) would expose sources to enforcement uncertainty and the risk of citizen suits, and also cause them to forego preventative maintenance.

Response: EPA does not agree that disapproval of section 101.222(h), (i), and (j) would lead to the consequences asserted by the commenters. As previously noted, since July 1, 2006, the federally-approved Texas SIP has not included an affirmative defense for excess emissions occurring during unplanned and planned maintenance, startup, shutdown, or malfunction activities. Today's action approves into the Texas SIP affirmative defense provisions for excess emissions related to unplanned maintenance, startup, and shutdown activities (which are considered malfunctions). A source asserting the affirmative defense in an action for penalties could be relieved from paying such penalties if it can

prove that certain enumerated criteria are met. Therefore, contrary to the commenters' assertions, we do not believe that our action will increase the level of regulatory uncertainty for sources; rather, our action may create more regulatory certainty. We further note that because the affirmative defense would be raised in the context of an enforcement action, its existence is unlikely to affect whether an enforcement case is brought. As provided in more detail in a previous response, we also do not believe that this action will result in sources choosing to forego maintenance of an emissions unit.

Comment: Several commenters assert that EPA's approval of sections 101.222(b), (c), (d), and (e) into the Texas SIP (providing an affirmative defense to upset events and opacity events) would impermissibly limit the penalty assessment criteria and citizen suit provisions in the Act. This approval could alter the meaning of the rule and make the "defense" applicable to citizens and EPA enforcement actions in district court. Citing *Weyerhaeuser* v. *Costle,* 590 F.2d 1011 (DC Cir 1978), the commenter asserts that EPA's approval would limit injunctive relief available under the Act and delay "swift and direct" enforcement of excess emission violations.

Response: We disagree. We believe that the affirmative defense criteria set forth in those sections are consistent with the Clean Air Act's penalty assessment provision, 42 U.S.C. 7413(e), which allows some discretion in determining a penalty. Section 7413(e) of the Act provides that, "in determining the amount of any penalty to be assessed under this section, or section 7604(a) of this title, the Administrator or the court, *as appropriate,* shall *take into consideration (in addition to such other factors as justice may require)* the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence * * *, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation." (Emphasis added.) The use of the phrases emphasized above makes clear that the Administrator or the Court has broad discretion in the factors to consider in determining whether to assess a penalty, and if so, how much that penalty should be. The existence of an affirmative defense does not automatically preclude the assessment of civil penalties. The party raising the defense must prove that it is entitled to it, and if the affirmative defense is rejected by the court, a judge is still required to determine the appropriate penalties in a given case. Furthermore, approval of the provisions in sections 101.222(b), (c), (d), and (e) into the Texas SIP does not preclude citizen suits under the Act. Rather, the affirmative defense may be raised in defense of a claim brought by EPA, the State or a private citizen. As described above, the CAA contemplates that a source may raise a variety of factors in an attempt to mitigate or completely alleviate the assessment of a penalty. While approval of sections 101.222(b), (c), (d), and (e) into the Texas SIP would allow a source to assert affirmative defense for certain excess emissions, we do not believe that approval of those sections impermissibly limit the penalty assessment criteria set forth in CAA section 113(e).

We agree with the commenter that the State rulemaking cannot affect the authorities provided by the CAA to EPA and citizens. However, on December 15, 2005 TCEQ adopted revisions to 30 TAC Chapter 101, and submitted them to EPA as a revision to the Texas SIP. EPA has evaluated the January 23, 2006 SIP submittal and has determined that sections 101.222(b), (c), (d), and (e) of the submittal are consistent with the Act as interpreted by our policy and guidance documents. Our approval of sections 101.222(b), (c), (d), and (e) into the Texas SIP provides a source the option to assert an affirmative defense for certain periods of excess emissions in an enforcement action brought against it by EPA or a citizen in federal court.

Moreover, even where an affirmative defense is successfully raised in defense to an action for penalties, it does not preclude other judicial relief that may be available, such as injunctive relief or a requirement to mitigate past harm or to correct the non-compliance at issue. The commenters are incorrect that the affirmative defense limits injunctive relief. The affirmative defense is only available in an action for penalties and would not be available to a claim requesting injunctive relief. Finally, EPA is cognizant of the *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1057–58 (DC Cir. 1978) decision, but EPA disagrees that approval of sections 101.222(b)–(e) into the Texas SIP would interfere with the legislative goal of "swift and direct" enforcement. We agree that the availability of civil penalties serves as an incentive for companies to be more cautious, to take more preventative actions, and to seek to develop technologies and management practices to avoid excess emissions. However, we also believe that the criteria a source would need to prove in order to successfully assert an affirmative defense will encourage companies to take such caution. For example, among the required criteria that the source must prove are that the periods of unauthorized emissions could not have been prevented through planning and design; were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and all emission monitoring system were kept in operation if possible. *See* 101.222(c).

J. Comments Related to "Administrative Necessity" and "One-Step-at-a–Time" Doctrines

Comments: Several commenters assert that EPA's disapproval of sections 101.222(h), (i), and (j) will result in a rushed transition of TCEQ's scheduled phase-in approach for authorizing MSS activities and that EPA's actions are inconsistent with the "administrative necessity" and "one-step-at-a-time" doctrines used by EPA in defending its recent greenhouse gas tailoring rule.

Responses: We disagree. As an initial matter, and as we explain further above, the State's submitted phased-in permitting process will not serve to modify any applicable requirement under the Texas SIP. Furthermore, our action disapproving the three provisions at issue, as discussed previously, merely maintains the status quo and should have no effect on that permitting process. Furthermore, we think this situation is distinct from that addressed in the greenhouse gas tailoring rule of June 30, 2010 (75 FR 31514) (Tailoring Rule). The Tailoring Rule concerns the applicability criteria that determine which stationary sources and modification projects become subject to permitting requirements for greenhouse gas (GHG) emissions under the Prevention of Significant Deterioration (PSD) and title V programs of the Act. EPA's issuance of the Tailoring Rule, which regulates GHGs under the CAA as air pollutants, triggered a permitting obligation for GHG emissions as of January 2, 2011. In the absence of the Tailoring Rule, the permitting obligations would apply at the 100 or 250 tons per year levels provided under the Act, greatly increasing the number of required permits, imposing undue costs on small sources, overwhelming the resources of permitting authorities, and severely impairing the functioning of the programs. In that action, EPA was taking action to relieve an imminent new burden that would have been imposed on sources and permitting authorities.

In contrast, our disapproval of certain provisions of the submitted plan does not change the status quo that has applied under the Texas SIP since July 1, 2006. Our disapproval action does not establish any new, burdensome obligation for which relief is needed. Rather, sources have been obligated to comply at all times with the applicable emission limits with no enforcement discretion or affirmative defense provisions since the previous Texas rules expired from the Texas SIP on June 30, 2006 by their own terms. Thus there is no administrative necessity or "one step at a time" argument applicable in this situation.

K. Comments Related to Weakening of the SIP

Comments: One commenter asserts that EPA's approval of sections 101.222(b)–(e) would weaken the Texas SIP by: Failing to require a "program to provide for the enforcement" of emission limitations and other control measures, citing CAA section 110(a)(2); changing the Reportable Quantity (RQ) for NOx that could interfere with attainment of the NAAQS; and allowing opacity as the only applicable RQ for certain boilers and combustion turbines in section 101.201(d), by adding the definitions for "boiler" and "combustion turbine."

Response: As explained earlier in this notice, EPA's role in evaluating a proposed revision to a SIP is to make sure that it provides for attainment and maintenance of the NAAQS and that it otherwise complies with applicable requirements of the Act. Texas has chosen to establish an affirmative defense for certain type of excess emissions, provided certain criteria are met, as set forth in sections 101.222(b), (c), (d), and (e). For the reasons provided above, we believe that such an affirmative defense is consistent with the requirements of the Act, including the requirement under section 110 that States must have adequate enforcement programs. The affirmative defense provision only provides limited relief to sources in an action for penalties. Although sources may avoid a penalty for certain excess emissions where they can successfully prove all of the elements of the affirmative defense, the excess emissions are still considered violations and the administrative or judicial decision-maker in an enforcement action may weigh all of the factors to determine if other relief, such as injunctive relief, is appropriate.

With respect to changes in the reporting requirements, the commenter expresses concern that the RQ for NO_X would be increased from 100 pounds in the current SIP to 200 pounds in ozone nonattainment, ozone maintenance, early action compact areas, Nueces County, and San Patricio County and to 5,000 pounds in all other areas. An examination of section 101.1(89) (Reportable Quantity) reveals that there are many other substances, other than NOx, with an RQ of 5,000 pounds. Furthermore, it is important to remember that approving the raising of the reportable quantity for NOx into the Texas SIP does not change the fact that excess emissions below the reportable quantity are violations. All excess emissions must be recorded by the sources. Title V sources must report both reportable and recordable excess emissions as part of their annual deviation reports. Therefore, EPA does not believe that the change weakens the SIP; by adjusting the RQ, TCEQ is able to better manage its program by focusing on significant releases, and, as noted, the information for non-reportable quantities will otherwise be available.

The commenter notes that for certain boilers and combustion turbines opacity is the only applicable RQ and asserts that this change constitutes a weakening of the SIP. However, the language in the submitted 30 TAC subsection 101.201(d) [which provides a limited reporting exemption for certain boilers or combustion turbines equipped with Continuous Emission Monitoring Systems (CEMS) capable of sampling, analyzing, and recording data for each successive 15-minute interval] was previously approved by EPA as a revision to the Texas SIP on March 30, 2005. *See* 70 FR 16129. *See* section 101.201(d). The SIP-approved rule contained the same RQ reporting provision for opacity. Section 101.201 did not have an expiration date and it has been federally enforceable since April 29, 2005. In summary, the SIP only has required a RQ reporting provision for opacity; there is no change to this reporting provision. The only change that EPA is approving into the SIP affecting the existing SIP rule 101.201(d) is two new definitions in section 101.1 for "boiler" and "combustion turbine." These definitions, however, were taken verbatim from the 30 TAC Chapter 117 rules. *See* 73 FR 73562 (December 3, 2008). Therefore, the addition of these two definitions is non-substantive for the SIP's purposes. The commenter's assertion that the Texas SIP has been weakened is incorrect. As such, there is no substantive change to the existing SIP and there is no weakening of the SIP.

L. Comments Related to Clarification Requests

Comments: One commenter requests that EPA clarify that excess emission reports must be submitted with the source's title V monitoring and deviation reports.

Response: The January 23, 2006 SIP submittal concerns the SIP not the title V (operating permit) program, which is not a component of the SIP. The title V program is a separate program from the SIP. However, title V permits issued by Texas are required to contain all applicable SIP requirements. Under the approved Texas SIP, all excess emissions are violations, whether or not they meet the criteria for an affirmative defense. Therefore, a source subject to the title V program requirements is required as part of the title V permit program to report all excess emissions, both reportable and nonreportable, as deviations.

Comment: One commenter noted that section 101.222 does not require permitting of emissions from MSS activities.

Response: The submitted Section 101.222(h) provides the opportunity for a source to file an application with the State for a NSR SIP permit to impose emission limitations on excess emissions (including opacity) during periods of planned maintenance, startup, or shutdown. As noted previously, the State cannot issue a NSR SIP permit that does not meet all the requirements of the Texas SIP. If the State wishes to issue a NSR permit that varies from the Texas SIP requirements, then it must submit the permit to EPA for approval as a source-specific SIP revision. The submitted provision establishes an overall 7-year time period for sources to file such applications, allotting a specified, shorter timeframe within that period for different categories of sources to submit such applications. Submitted section 101.222(i) concerns the processing of such applications. The provision in submitted section 101.222(h), which provides for an affirmative defense to excess emissions during planned maintenance, startup, or shutdown activities, no longer applies for a specific source under the State rules once the period for filing and processing such an application expires for the source category. We agree with the State's interpretation of its rule that sources are not required to submit such applications. If sources choose not to seek a permit based on the prescribed timeline, then those sources' excess emissions occurring during these planned MSS activities would be

considered violations, for which an affirmative defense would not be available under the State rules.

Comment: One commenter wishes to point out that the provision of the Michigan SIP that EPA disapproved contained an automatic malfunction exemption and is not pertinent to this proceeding.

Response: The provision of the Michigan SIP that EPA disapproved and that was at issue in *Michigan Department of Environmental Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000) mainly concerned an automatic exemption. Our listing of that case in section B of May 13, 2010 proposal was for informational purposes.

VI. Final Action

Today, we are finalizing our May 13, 2010 (75 FR 26892) proposal to approve into the Texas SIP the following provisions of 30 TAC General Air Quality Rule 101 as submitted on January 23, 2006:

Subchapter A

Revised section 101.1 (Definitions); and

Subchapter F

Revised Section 101.201 (Emissions Event Reporting and Recordkeeping Requirements), but for 30 TAC 101.201(h) which is no longer before EPA for action,

Revised Section 101.211 (Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), but for 30 TAC 101.211(f) which is no longer before EPA for action,

New Section 101.221 (Operational Requirements),

New Section 101.222 (Demonstrations), except 101.222(h), 101.222(i), and 101.222(j)),

New Section 101.223 (Actions to Reduce Excessive Emissions).

We are finalizing our May 13, 2010 (75 FR 26892) proposal to disapprove sections 101.222(h) (Planned Maintenance, Startup, or Shutdown Activity), 101.222(i) (concerning effective date of permit applications), and 101.222(j) (concerning processing of permit applications) into the Texas SIP.

VII. 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. If a portion of the plan revision meets all the applicable requirements of this chapter and Federal regulations, the Administrator may approve the plan revision in part. 42 U.S.C. 7410(k); 40 CFR 52.02(a). If a portion of the plan revision does not meet all the applicable requirements of this chapter and Federal regulations, the Administrator may then disapprove portions of the plan revision in part that does not meet the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices that meet the criteria of the Act, and to disapprove state choices that do not meet the criteria of the Act. Accordingly, this final action, in part, approves state law as meeting Federal requirements and, in part, disapproves state law as not meeting Federal requirements; and does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act;
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994);
- Does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law; and
- Is not a "major rule" as defined by 5 U.S.C. 804(2) under the Congressional Review Act, 5 U.S.C. 801 *et seq.,* added by the Small Business Regulatory Enforcement Fairness Act of 1996. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule."

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 January 10, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2) of the Act.)

List of Subjects in 40 CFR Part 52

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

Dated: October 29, 2010.

Al Armendariz,

Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 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 the entry for Chapter 101 in the table in paragraph (c) is amended by:
■ a. Revising the entry for Section 101.1 under Subchapter A.
■ b. Revising the entry for Section 101.201 under Subchapter F Division 1.
■ c. Revising the entry for Section 101.211 under Subchapter F Division 2.
■ d. Revising the entries for Section 101.221, 101.222, and 101.223 under Subchapter F Division 3.

The revisions 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 101—General Air Quality Rules				
Subchapter A—General Rules				
Section 101.1	Definitions	01/23/06	11/10/10 [Insert *FR* 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.	01/23/06	11/10/10 [Insert *FR* page number where document begins].	101.201(h) is not in the SIP.
Division 2—Maintenance, Startup, and Shutdown Activities				
Section 101.211	Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements.	01/23/06	11/10/10 [Insert *FR* page number where document begins].	101.211(f) is not in the SIP.
Division 3—Operational Requirements, Demonstrations, and Actions To Reduce Excessive Emissions				
Section 101.221	Operational Requirements	01/23/06	11/10/10 [Insert *FR* page number where document begins].	
Section 101.222	Demonstrations	01/23/06	11/10/10 [Insert *FR* page number where document begins].	The SIP does not include 101.222(h), 101.222 (i), and 101.222 (j). See section 52.2273(e).
Section 101.223	Actions to Reduce Excessive Emissions.	01/23/06	11/10/10 [Insert *FR* page number where document begins].	
	* * * * * * *			

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■ 3. Section 52.2273 is amended by adding a new paragraph (e) to read as follows:

§ 52.2273 Approval status.

* * * * *

(e) EPA is disapproving the Texas SIP revision submittals under 30 TAC Chapter 101—General Air Quality Rules as follows:

(1) Subchapter F—Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities, Division 1—Section 101.222 (Demonstrations): Sections 101.222(h), 101.222(i), and 101.222(j), adopted December 14, 2005, and submitted January 23, 2006.

[FR Doc. 2010–28135 Filed 11–9–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0740; FRL–9221–6]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on May 19, 2010 and concern particulate matter (PM) emissions from beef feedlots. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on December 10, 2010.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2008–0740 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 947–4115, *steckel.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.