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**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2015-20468 Filed 8-18-15; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-115452-14]

RIN 1545-BM12

**Disguised Payments for Services; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to a notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking (REG-115452-14) that was published in the **Federal Register** on Thursday, July 23, 2015 (80 FR 43652). The proposed regulations are relating to disguised payments for services under section 707(a)(2)(A) of the Internal Revenue Code. The proposed regulations provide guidance to partnerships and their partners regarding when an arrangement will be treated as a disguised payment for services.

**DATES:** Written or electronic comments and requests for a public hearing for the notice of proposed rulemaking published at 80 FR 43625, July 23, 2015, are still being accepted and must be received by October 21, 2015.

**FOR FURTHER INFORMATION CONTACT:** Jaelyn Goldberg at (202) 317-6850 (not a toll free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The notice of proposed rulemaking (REG-115452-14) that is the subject of these corrections is under section 707 of the Internal Revenue Code.

**Need for Correction**

As published, the notice of proposed (REG-115452-14) contains errors that may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the notice of proposed rulemaking (REG-115452-14), that was the subject of FR Doc. 2015-17828, is corrected as follows:

1. On page 43652, in the preamble, first column, under the caption **ADDRESSES**, the eleventh line of the paragraph, the language “Washington, DC, or sent electronically,” is corrected to read “Washington, DC, 20224 or sent electronically.”.

2. On page 43653, in the preamble, first column, the tenth line from the bottom of the first full paragraph, the language “gross income allocation in a nonpartner” is corrected to read “gross income allocation in a non-partner”.

3. On page 43655, in the preamble, second column, the third line from the bottom of the second full paragraph, the language “66-95 and revise Rev. Rul. 69-180,” is corrected to read “66-95 and Rev. Rul. 69-180.”.

4. On page 43657, in the preamble, third column, under the paragraph heading “Drafting Information” the third line of the paragraph, the language “Goldberg of the Office Assistant Chief” is corrected to read “Goldberg of the Office Associate Chief”.

**§ 1.707-2 [Corrected]**

5. On page 46358, column 3, paragraph (c), the eighth and ninth lines, the language “arrangement constitutes in whole or in part a payment for services. The” is corrected to read “arrangement constitutes (in whole or in part) a payment for services. The.”.

6. On page 43659, column 1, paragraph (d) *Example 1*, the twelfth line, the language “first two years of partnership’s operations.” is corrected to read “first two years of the partnership’s operations.”.

7. On page 43660, column 1, paragraph (d), *Example 3* (iv), the sixteenth line, the language “the presence or absence of entrepreneurial” is corrected to read “the presence or absence of significant entrepreneurial”.

8. On page 43660, column 1, paragraph (d), *Example 4* (ii), the last line of the column, the language “entrepreneurial risk. The special allocation to” is corrected to read “significant entrepreneurial risk. The special allocation to”.

9. On page 43660, column 3, paragraph (d), *Example 6* (ii), the fourth line from the bottom of the column, the language “waiver of the partnership.

The ABC” is corrected to read “waiver of the fee. The ABC”.

**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2015-20476 Filed 8-18-15; 8:45 am]

**BILLING CODE 4830-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R06-OAR-2006-0131; FRL-9930-17-Region-6]

**Approval and Promulgation of Implementation Plans; Louisiana; Major Source Permitting State Implementation Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of revisions to the Louisiana New Source Review (NSR) State Implementation Plan (SIP) submitted by the State of Louisiana designee. These revisions are updates to the Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NNSR) permit programs.

**DATES:** Written comments must be received on or before September 18, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-OAR-2006-0131, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions.
- *Email:* Stephanie Kordzi at [kordzi.stephanie@epa.gov](mailto:kordzi.stephanie@epa.gov).
- *Mail or delivery:* Stephanie Kordzi, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2006-0131. The EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or email, if you

believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means that the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about the EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Bill Deese at 214-665-7253.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Kordzi, Telephone (214) 665-7520, email at [kordzi.stephanie@epa.gov](mailto:kordzi.stephanie@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

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**I. Summary of State SIP Submittals for Chapters 5 and 6 Air Permits Program**

The Clean Air Act at section 110(a)(2)(C) requires states to develop and submit to the EPA for approval into the state SIP, preconstruction review programs applicable to new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP program is composed of three separate programs: PSD, NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that are designated as meeting the National Ambient Air Quality Standards (NAAQS), *i.e.*, “attainment areas,” as well as areas designated as “unclassifiable” because there is insufficient information to determine if the area meets the NAAQS. The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are designated as not being in attainment of the NAAQS, *i.e.*, “nonattainment areas.” The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source thresholds and thus do not qualify as “major” and applies regardless of the designation of the area in which a source is located. This particular SIP proposed action addresses only the PSD and NNSR major permitting programs.

The EPA regulations, 40 CFR 51.160–51.166, contain the criteria that states must satisfy for the EPA to approve the NSR programs as part of the SIP. In addition, there are several provisions in 40 CFR part 51 that apply generally to all SIP revisions. 40 CFR 51.160 establishes the enforceable procedures that must be a part of a NSR program.

Sections 51.160–51.164 require a SIP revision to demonstrate that the adopted rules will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. Based upon our evaluation of the submittals, the EPA has concluded that the regulatory submittals, as ultimately revised, meet the requirements of the CAA section 110(a). Below are summaries of the individual SIP submittals from Secretary of the Louisiana Department of Environmental Quality (LDEQ).

**A. July 25, 1997, Submittal**

The LDEQ submitted Louisiana Administrative Code (LAC) rule changes made in 1996. It includes final revised regulation LAC 33:III, sections 501, 504, 509, and 517. Section 504 is already part of the Louisiana SIP approved by the EPA on September 30, 2002, 2002 at 67 FR 61270. The EPA will act on section 517 in a separate action in the future.

**B. June 22, 1998, Submittal**

The LDEQ submitted rule changes made in 1997. It includes changes to sections 501, 509, and 517. The EPA will act on sections 501 and 517 in a separate action in the future.

**C. February 2, 2000, Submittal**

The LDEQ submitted rule changes made in 1998. It includes sections 509 and 603.

**D. January 27, 2003, Submittal**

The LDEQ submitted rule changes made from 1999–2001. It includes section 509.B.2., which addresses certain Parishes as nonattainment for ozone. Sections 613 and 615 were already approved as part of the SIP on September 27, 2002, at 67 FR 60877.

**E. June 15, 2005, Submittal**

The LDEQ submitted rule changes made in 2005 for Baton Rouge in section 504.A.6., covering the nonattainment NSR procedures.

**F. December 20, 2005, Submittal**

The LDEQ submitted rule changes made in 2005 concerning the NSR Reform Program in sections 504 and 509. The submitted rules include, among other things, provisions for baseline emissions calculations, an actual-to-projected actual methodology for calculating emissions changes, options for plantwide applicability limits, and recordkeeping and reporting requirements. The changes do not include any portion of the Federal NSR Reform rule that was vacated by the US District Court of Appeals for the D.C.

Circuit Court on June 24, 2005, concerning Clean Unit applicability test and Pollution Control Projects.

#### G. May 5, 2006, Submittal

The LDEQ submitted rule changes made in 2005. It includes sections 501, 504, 505, 507, 509, and 613. The EPA will act on section 501, a minor NSR rule, and section 507, a title V rule that is not part of the SIP, in separate actions in the future. The EPA returned section 505 to LDEQ because it addresses the Acid Rain Program; the Acid Rain Program is not a title I program and therefore should not be included in the Louisiana SIP.

#### H. July 20, 2007, Submittal

The LDEQ submitted a revision to the SIP's Alternative Emission Reduction Plan ("Bubble") for Union Carbide Corporation, Taft Plant reflecting LDEQ's rescission of permit no. 1836T, effective on March 12, 2007. The EPA is proposing to approve this revision that codifies LDEQ's rescission of the permit for the alternative emission reduction plan ("Bubble") for Union Carbide Corporation, Taft Plant.

#### I. November 9, 2007, Submittal

The LDEQ submitted rule changes made in 2006. It includes sections 501, 504, 509, 513, 531, and 607. The EPA will act on sections 501, 513 and 531 in a separate action in the future because

they concern minor NSR. In addition, on October 15, 2014, LDEQ removed from our consideration section 504.M.

#### J. August 14, 2009, Submittal

The LDEQ submitted rule changes made in 2007, that included sections 501, 504, 505, 506, and 507. The EPA proposes to approve section 504 which contains a revision that requires all information submitted by air permittees be sent to the Office of Environmental Services.

The EPA will act on section 501 in a separate action in the future because it concerns minor NSR. The EPA will return section 505 to LDEQ because it addresses the Acid Rain Program Permitting Requirements, which are not part of a SIP. The approved the revisions to Section 506 on April 17, 2014 are found at 79 FR 21631. The EPA will act on section 507 in a separate action in the future because it concerns the title V program that is not part of a SIP.

The submittal also contains a rulemaking petition for the repeal of section 510, which was never part of the SIP. The repeal affects sections 603, 605, 607, 613, and 615 because those sections reference to LAC 33:III.510. In addition, to be consistent with the change to section 504, a change was made to section 613, which dictates that reports be submitted to the Office of Environmental Services.

#### K. May 16, 2011, Submittal

The LDEQ submitted rule changes to sections 504 and 509 to address the PM<sub>2.5</sub> NSR Implementation Rule. The rule submittal also revises the regulatory definition of "regulated pollutant" to address any pollutant for which there is a NAAQS and precursors to the formation of such pollutant when identified for regulation by the EPA. For NSR Reform purposes, LDEQ also repealed the definition of malfunction in response to the EPA's concerns expressed in our January 24, 2008, letter. The repeal of the definition addressed our concerns.

#### L. February 27, 2013, Submittal

The LDEQ submitted revisions to section 509 that update the PSD rule to implement the Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>) Increments.

Table 1 below summarizes the changes that are in the SIP revision submittals. A summary of our evaluation of each section and the basis for our proposed approval is included in this rulemaking. The accompanying Technical Support Document (TSD) includes a detailed evaluation of the submittals and our rationale. The TSD may be accessed online at [www.regulations.gov](http://www.regulations.gov), Docket No. EPA-R06-OAR-2006-0131.

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

Title of SIP submittal	Date submitted to EPA	Date of State adoption	Regulations affected
Air Permit Procedure Revisions .....	7/25/1997	1996	Sections 501, and 509. Section 504 was approved by EPA into the SIP on 09/30/2002 (67 FR 61270).
Air Permit Procedure Revisions .....	6/22/1998	1997	Section 509.
Air Permit Procedure and ERC Banking Revisions.	2/2/2000	1998	Sections 509 and 603.
Air Permit Procedure and ERC Banking Revisions.	1/27/2003	1999–2001	Sections 509, 613, and 615. Sections 613 and 615 were approved by EPA into the SIP on 09/27/2002 (67 FR 60877).
Baton Rouge Severe Area Rule Update	6/15/2005	4/20/2004	Section 504.
Air Permit Procedure Revisions and New Source Review Reform.	12/20/2005	12/20/2005	Sections 504 and 509.
Air Permit Procedure and ERC Banking Revisions.	5/5/2006	2005	Sections 504, 509, and 613.
Rescission of Alternative Emission Reduction Plan for Union Carbide Corporation, Taft Plant.	7/20/2007	3/12/2007	EPA approved the Union Carbide permit as part of the SIP. See 07/18/1990, 55 FR 29205. On 3/12/07, LDEQ rescinded the permit.
Air Permit Procedure and ERC Banking Revisions.	11/9/2007	2006	Sections 504, 509, and 607. On 10/15/2014, LDEQ requested that EPA not take action on LAC 33:III.504.M. Therefore, it is not before EPA for action.
Air Permit Procedure Revisions .....	8/14/2009	2007	Sections 504, 603, 605, 607, 613, and 615.
Air Permit Procedure Revisions for PM <sub>2.5</sub> NAAQS.	5/16/2011	2011	Sections 504 and 509.
LA SIP Update, PM <sub>2.5</sub> Increments .....	2/27/2013	12/20/2012	Section 509.

## II. Evaluation

### A. Revisions to the NNSR and PSD Programs Air Permit Procedures

We evaluated and are proposing to approve the Chapter 5 amendments contained in the July 25, 1997, June 22, 1998, February 2, 2000, January 27, 2003, June 15, 2005, May 5, 2006, July 20, 2007, November 9, 2007, August 14, 2009, submittals. These amendments, if approved by the EPA, would provide clarity to the SIP-approved rules and correct contradictory language. Specific proposed revisions address the assessment and validation of a facility's emissions inventory values. Further, the amendments would revise the SIP rules to conform to the latest changes to Louisiana laws. The changes also define, for NNSR purposes, the parishes that have been designated as non-attainment for ozone. The EPA's evaluation of the Louisiana SIP submittals include a line-by-line comparison, which can be found in the TSD, of the proposed revisions with the federal requirements. We find that in most cases, the state regulatory language is identical to that of the federal rule. Where the rules are not identical, we find they are consistent with the federal rules and definitions and meet their intent. The EPA is therefore proposing to approve the submitted rules as part of the Louisiana NNSR and PSD SIP.

### B. Revisions to the NNSR and PSD Programs for the NSR Reform Rule

We evaluated and are proposing to approve the December 20, 2005, as revised through the May 16, 2011 submittal that contains changes to the Louisiana NNSR and PSD permitting programs reflecting the requirements found in the federal NSR Reform Program SIP rules.

Our evaluation of the Louisiana SIP submittals included a line-by-line comparison, which can be found in the TSD, of the proposed revisions with the federal requirements. State agencies may deviate from the specific definitions of 40 CFR part 51, and the 2002 NSR Reform Rules, only if the States specifically demonstrate that the submitted definitions are more stringent or at least as stringent as the corresponding federal definitions in accordance with 40 CFR 51.165(b)(2).

The State of Louisiana elected to incorporate by reference (IBR) most of the federal rules but adopted some with differences. As part of its December 20, 2005, submittal, Louisiana provided the EPA with an Equivalency Determination that addresses the differences with the federal rules regarding emissions defined that are associated with startup,

shutdown and malfunction emissions. The Secretary of the LDEQ also submitted on June 9, 2015 a letter containing further clarification. In addition, LDEQ provided follow up SIP submittals that are summarized above and discussed in further detail in the Technical Support Document. We find that the LDEQ has adopted the necessary elements of NSR Reform rule for both the NNSR and PSD programs.

As discussed in *I. F.*, Louisiana's submitted rules do not include the Clean Unit applicability test and Pollution Control Projects vacated by the Court.<sup>1</sup> Further, "reasonable possibility" provisions that were promulgated in the EPA's NSR Reform SIP rules were remanded back to EPA for further consideration on June 24, 2005.<sup>1</sup>

The U.S. Court of Appeals for the DC Circuit in *New York v. EPA*, 413 F.3d 3 (D.C. Cir. 2005) (New York) ordered the EPA either to provide an acceptable explanation for its "reasonable possibility" standard or to devise an appropriately supported alternative. The Court held, "[b]ecause EPA has failed to explain how it can ensure NSR compliance without the relevant data, we will remand for it either to provide an acceptable explanation for its "reasonable possibility" standard or to devise an appropriately supportive alternative." Initially, in promulgating the "reasonable possibility" standard, we intended to limit recordkeeping requirements to those projects for which variability in calculating emissions creates an interest in obtaining additional information in order to confirm that the appropriate applicability outcome is reached.

To satisfy the Court's remand, the EPA has clarified what constitutes "reasonable possibility" and when the "reasonable possibility" recordkeeping requirements apply. We adopted a bright-line test at 50 percent that will capture projects that have a higher probability of variability and/or error in projected emissions. Projects with projected increases below the 50-percent threshold, especially when emissions from demand growth are included in projections, are, we believe, sufficiently small that any variability or error in calculations is less likely to be large enough for the change to have increased emissions to the significant level. This requirement is based on authority in circumstances such as these that allows agencies to establish a bright-line test, as opposed to making case-by-case determinations. See, e.g.,

*Time Warner Entertainment Co. L.P. v. F.C.C.*, 240 F.3d 1126, 1141 (D.C. Cir. 2001).

We also state "[s]ome State or local authorities may be able to adopt these changes through a change in interpretation of the term "reasonable possibility" without the need to revise the SIP. For any State or local authority that can implement the changes without revising its approved SIP, the changes will become effective when the reviewing authority publicly announces that it accepts these changes by interpretation. In the case of NSR SIP revisions that include the term "reasonable possibility" but that we have not yet approved, we will approve the SIP revision if the State or local authority commits to implementing the "reasonable possibility" standard in a manner consistent with our final rule."

The EPA Region 6 requested in a letter of January 24, 2008, that LDEQ submit a commitment to implement the "reasonable possibility provisions in Sections 504.D.9 and 509.R.6 in a manner consistent with EPA's revised rules. On October 6, 2008, LDEQ committed to implement the provisions in a manner consistent with the EPA's "Reasonable Possibility in Recordkeeping" rule.

In addition, on February 22, 2013, the EPA identified seven Louisiana SIP-approved citations that could allow emissions that were either automatically or through director's discretion, exempted from compliance with otherwise applicable emission limitations. *State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Proposed Rule*, (78 FR 12522, February 22, 2013). On May 22, 2015, the EPA issued a final action requiring Louisiana to ensure it has a plan in place that is fully consistent with the CAA and recent court decisions regarding startup, shutdown, and malfunction (SSM) for the named Louisiana rule citations.

In this proposal action, we are addressing the eight rule changes for baseline actual emissions and projected actual emissions definitions. These submitted definitions include the phrase "authorized emissions associated with startup, shutdown, and malfunction (SSM)." Because the term "authorized emissions" as used could encompass the exempted emissions subject to the SSM SIP Call if Louisiana fails to appropriately respond to the SSM SIP Call within 18 months from the issuance of the final action, the EPA will have to revisit its approval of these

<sup>1</sup> The EPA promulgated the revised provisions on December 21, 2007 at 72 FR 72607.

revisions. In the interim, the LDEQ sent us a letter on June 9, 2015, that clarifies the definition of authorized emissions and also clarifies LDEQ's use of variances and emergency orders for permitted sources which temporarily allow emissions greater than those provided under a specific permit condition or temporarily replace an emissions unit that cannot operate without being in violation of an underlying permit condition or would be a danger to operate. See discussion in the following Section II.C. below.

We are proposing to approve the December 20, 2005, submittal, as revised by the May 16, 2011, submittal as part of the Louisiana SIP for Major NSR reform.

#### C. LDEQ's Clarification Letter

LDEQ provided a clarification letter (Clarification) on June 9, 2015, which was requested by the EPA to clarify perceived inconsistencies in certain provisions in the SIP submission. The full text of the letter can be found in the Docket for this action. This letter clarifies the following aspects of the Major NSR Air Permit Program.

The EPA asked for clarification on how the state provisions utilize the term "authorized" in the context of emissions associated with start-ups, shutdowns, and malfunctions, a term not found in the federal rules. We also asked for clarification on how variances and emergency orders affect permit actions.

LDEQ explained in its clarification letter that the term "authorized" does not expand the meaning of "baseline actual emissions" or "projected actual emissions" in a manner to render the submitted revisions to LAC 33:III.504 and 509 less stringent than their corresponding federal provisions. Accordingly, a permittee cannot circumvent what would otherwise be applicable NSR requirements when issuing either a new or modified (*i.e.*, a physical change or change in the method of operation) permit that is subject to PSD review or improperly establishes a plantwide applicability limit by means of an LDEQ-issued variance or Emergency Order. In the context of LAC 33:III.504 and 509, the term "authorized emissions" refers to emissions authorized through only a valid air permit issued pursuant to LAC 33:III.Chapter 5. LDEQ emphasized that should it calculate baseline actual emissions using its definition in LAC 33:III.504.K or 509.B, the result would be no different than if the federal definition at 40 CFR 51.165(a)(1)(xxxv) or 51.166(b)(47) was utilized.

Next, LDEQ responded that a variance is not a permit, but rather a waiver

issued prospectively by LDEQ to allow emissions from an emissions unit to temporarily exceed permitted limitations or to authorize the use of a temporary emissions unit not addressed by an air permit. Baseline actual emissions cannot exceed permitted limits, even if additional emissions have been approved by means of a variance or Declaration of Emergency and Administrative Order.

In addition, LDEQ expanded on its use of the term "authorized" in relation to its context of LAC 33:III.919 (Emissions Inventory) and the reporting of actual emissions to LDEQ's Emissions Reporting and Inventory Center. LDEQ stated it would amend its "Louisiana Guidance for Air Permitting Actions" to clarify that, for purposes of baseline actual emissions and projected actual emissions, "authorized" emissions cannot exceed the limitations imposed by an air permit issued pursuant to LAC 33:III.Chapter 5.

#### D. Revisions to the NNSR and PSD Programs for PM<sub>2.5</sub> Implementation

We evaluated and are proposing to approve the revisions to the Louisiana PSD and NNSR programs submitted on May 16, 2011, and to the PSD program submitted on February 27, 2013, finding that the Louisiana NNSR and PSD permitting programs comply with the federal regulatory requirements for implementation of the PM<sub>2.5</sub> NAAQS as required through the May 16, 2008 NSR PM<sub>2.5</sub> Implementation Rule and the October 20, 2010 PM<sub>2.5</sub> PSD SILs—SMC and Increments Rule. See 73 FR 28321 and 75 FR 64864.

#### E. Emission Reduction Credits (ERC) Banking Revisions

We evaluated and are proposing to approve revisions to the existing SIP-approved Louisiana Regulations on Control of Emissions through the Use of ERC Banking. The submittals containing Chapter 6 rules that are a part of this action are dated February 2, 2000, January 27, 2003, May 5, 2006, November 9, 2007, and August 14, 2009, found that the Louisiana ERC banking revisions comply with the federal regulatory requirements for implementation of the control of emissions through the use of ERC Banking. The changes include: (1) Establishing emission banking for all parishes designated as ozone nonattainment areas in the state; (2) revising submittal dates for banking credits; (3) revising references after department reorganization to reflect new organization structure; and (4) replacing the 1-hour ozone standard with the 8-hour standard. Our

evaluation of the Louisiana SIP submittal included a line-by-line comparison, which is provided in the TSD, of the proposed revisions with the federal requirements. Most of the changes contained in the Chapter 6 submittals were not substantial. Our analysis shows that in most cases, the state regulatory language is identical to the federal rule. Where the rules are not identical, they are consistent with and support the intent of the federal rules and definitions. The EPA is therefore proposing to approve these submittals. Note that the revisions we are addressing update the existing SIP-approved requirements to address current nonattainment areas. These revisions do not change the underlying purpose of the emissions bank, which is to provide nonattainment offsets.

*F. Does the proposed approval of the Louisiana Air Permit Procedure Revisions or ERC Banking Revisions interfere with attainment, reasonable further progress, or any other applicable requirement of the Act?*

We have determined that the regulations submitted to EPA for approval as SIP revisions meet the requirements of section 110(l). We have determined that their implementation will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. The EPA's evaluation of the Louisiana SIP submittals included a line-by-line comparison, which can be found in section VI of the TSD, of the proposed revisions with the federal requirements. If the rules are new, including the NSR Reform rules contained in the December 20, 2005 submittal, then they were determined to be consistent with the federal SIP rules. Therefore, as discussed above and in the TSD, the revisions to the Louisiana NNSR and PSD programs are substantively the same as the 2002 NSR Reform Rules, without including any vacated provisions, we conclude that these rules do not interfere with attainment, reasonable further progress, or any other applicable requirement of the Act. See 67 FR 80186 and 68 FR 63021 for EPA's detailed explanation of the legal basis for the 2002 NSR Reform Rules. The EPA has concluded that the regulatory submittals, as ultimately revised, meet the requirements of the CAA section 110(l).

Additionally, the rescission of the Bubble for Union Carbide Corporation Taft Plant also meets CAA section 110(l). On July 18, 1990, the EPA approved the Bubble, as a revision to the Louisiana SIP (55 FR 29203). The

original SIP revision was based on an Alternative Emission Reduction Plan as requested by the Governor of Louisiana on October 19, 1983, for St. Charles Parish due to the area being located in a nonattainment area for ozone. The permit was incorporated by reference into the SIP at 40 CFR 52.970(d). The submittal incorrectly identified the regulation citation as 40 CFR 52.970(c)(55)(i)(a). The rescission was a result of changed circumstances regarding the two tanks (Tanks 2635 and 2102) originally regulated by the Bubble permit 1836T. Tank 2635 is no longer in service and the regulation of Tank 2102 was moved to Logistics Title Permit No. 2656-V0 which is subject to Reasonably Available Control Technology (RACT) emission control requirements, resulting in significantly lower VOC emission. The annual emission limit of 0.51 tons per year of VOC, is roughly a 95% decrease in the VOC emission limit from the 1983 permit of 9.5 tpy. The emission reductions gained through the use of RACT and requiring compliance with an annual emission limit for Tank 2102 negate the need for use of emission

reductions identified in 55 FR 29203, from the shutdown of Glyoxal Reactor Column vent and the storage of compounds with a lower vapor pressure in 5 tanks (2201 (removed from service), and the other four tanks, 2202, 2212, 2206, and 2315) as identified, which provided credits to allow Tanks 2102 and 2635 to obtain exemptions. All of the tanks in service are now regulated under Logistics Title Permit No. 2656-V0). Therefore, less emissions vented to the atmosphere ensure attainment and reasonable progress.

**III. Proposed Action**

In this action, the EPA proposes to approve severable revisions to the major air permitting procedures in sections 501, 504, 509, 523, 603, 605, 607, 613, and 615 as submitted to the EPA to revise the Louisiana Major NSR SIP Permit program on July 25, 1997, June 22, 1998, February 2, 2000, January 27, 2003, June 15, 2005, December 20, 2005, May 5, 2006, July 20, 2007, November 9, 2007, August 14, 2009, May 16, 2011, and February 27, 2013. In addition, the EPA is proposing to remove the alternative emission reduction plan

(“Bubble”) for Union Carbide Corporation, Taft Plant to reflect LDEQ’s rescission of the permit, from the SIP. Table 2 in Section III summarizes each regulatory citation that is affected by this action. Note, Table 2 does not include the rescission of the Union Carbide bubble, submitted on July 20, 2007, which is also being proposed for approval. We have made the preliminary determination that the revisions were developed and submitted in accordance with the requirements of the CAA and the EPA’s regulations regarding SIP development at 40 CFR part 51. Additionally, we have determined that the submitted revisions to the Louisiana PSD and NSR programs, as clarified by LDEQ, are consistent with our major source permitting regulations at 40 CFR 51.160–51.166 and the associated policy and guidance. Therefore, under section 110 and parts C and D of the Act, and for the reasons presented above and in our accompanying TSD, the EPA proposes to fully approve the specific revisions to the Louisiana SIP identified in Table 2 below:

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

Section	Date submitted to EPA as SIP amendment	Affected regulation
Section 501—Scope and Applicability		
Section 501 .....	7/25/1997	Section 501—Authority.
Section 504—Nonattainment New Source Review (NSR) Procedures and Offset Requirements in Specified Parishes		
Section 504.A .....	6/15/2005 12/20/2005	Section 504.A.6. Sections 504.A., 504.A.1., 504.A.3., 504.A.3.a.–d., 504.A.4, 504.A.5., 504.A.5.a.–b., 504.A.6., 504.A.6.a.–f., 504.A.7., 504.A.7.a.–c., 504.A.8.
Section 504.C .....	11/9/2007 5/5/2006	Sections 504.A.1., 504.A.2., 504.A.3., 504.A.4, 504.A.8. Section 504.C., Section 504.F.7., Section 504.F.7.a—Table 1, PM <sub>10</sub> .
Section 504.D .....	8/14/2009 6/15/2005	Section 504.C. Section 504.D.3.
Section 504.F .....	12/20/2005 11/9/2007 5/5/2006 11/09/2007 8/14/2009 5/16/2011	Sections 504.D.4., 504.D.9, 504.D.9.a.–e., 504.D.10., 504D.11., 504.D.11.a–b. Sections 504.D.5 Sections 504.F.11., and 504.F.12. Section 504.F.7, 504.F.7.a—Table 1, Footnote PM <sub>10</sub> . Sections 504.F.1., 504.F.8.a.–c., 504.F.9.L Table 1. Section 504.F.7. Section 504.F.1.
Section 504.G .....	12/20/2005	Sections 504.G., 504.G.1., 504.G.2., 504.G.2.a.–e., 504.G.3., 504.G.3.a.–c., 504.G.4., 504.G.4.a.–b., 504.G.5., 504.G.5.a.–b., 504.G.6., 504.G.6.a.–f., 504.G.7., 504.G.7.a.–c., 504.G.8., 504.G.9.
Section 504.H .....	12/20/2005	Sections 504.H.1., 504.H.2., 504.H.2.a.–d., 504.H.3., 504.H.3.a.–d., 504.H.4., 504.H.4.a.–c., 504.H.5., 504.H.6., 504.H.7., 504.H.8., 504.H.8.a.–f., 504.H.9., 504.H.9.a.–e., 504.H.10., 504.H.11.
Section 504.I .....	12/20/2005	Sections 504.I.1., 504.I.2., 504.I.2.a.–b., 504.I.3., 504.I.3.a.–e., 504.I.4., 504.I.5., 504.I.6., 504.I.6.a.–d.
Section 504.J .....	12/20/2005 5/16/2011	Sections 504.J.1., 504.J.1.a.–d., 504.J.2., 504.J.2.a.–k., 504.J.3., 504.J.3.a.–c., 504.J.4., 504.J.4.a.–b., 504.J.5., 504.J.6., 504.J.6.a.–b., 504.J.7., 504.J.7.a.–j., 504.J.8., 504.J.8.a.–b., 504.J.9., 504.J.9.a.–e., 504.J.10., 504.J.10.a.–e., 504.J.11., 504.J.11.a.–c., 504.J.12., 504.J.12.a.–i., 504.J.13., 504.J.13.a.–b., 504.J.14., 504.J.14.a.–c., 504.J.15., 504.J.15.a.–b. Section 504.J.5.

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

Section	Date submitted to EPA as SIP amendment	Affected regulation
Section 504.K .....	12/20/2005	Sections 504.K. Definitions. Beginning with <i>Act</i> —repealed, <i>Administrator</i> , <i>Adverse Impact on Visibility</i> , <i>Allowable Emissions</i> , <i>Baseline Actual Emissions</i> , <i>Begin Actual Construction</i> , <i>Best Available Control Technology</i> , <i>Clean Air Act</i> , <i>Clean Coal Technology</i> , <i>Clean Coal Technology Demonstration Project</i> , <i>Clean Unit</i> , <i>Commence</i> , <i>Construction</i> , <i>Continuous Emissions Monitoring System</i> , <i>Continuous Emissions Rate Monitoring System</i> , <i>Continuous Parameter Monitoring System</i> , <i>Electric Utility Steam Generating Unit</i> , <i>Emissions Unit</i> , <i>Federal Class I Area</i> , <i>Federal Land Manager</i> , <i>Federally Enforceable</i> , <i>Fugitive Emissions</i> , <i>Lowest Achievable Emission Rate</i> , <i>Major Modification</i> , <i>Major Stationary Source</i> , <i>Mandatory Federal Class I Area</i> , <i>Natural Conditions</i> , <i>Necessary Preconstruction Approvals</i> , or <i>Permits</i> , and <i>Net Emissions Increase</i> .
Section 504.L .....	5/16/2011	Section 504.K. Definition. <i>Malfunction</i> —repealed, <i>Regulated Pollutant</i> , <i>Significant</i> .
Section 504.L .....	11/09/2007	Section 504.L Table 1 and footnotes.
Section 504.L .....	5/16/2011	Section 504 L Table 1 and footnotes for <i>Major Stationary Source</i> .
Section 504.M .....	11/09/2007	Sections 504.M. and 504.M.1.–3. EPA is not taking action on this section based on LDEQ 10/15/2014, request for EPA to “not take action”.
Section 509—Prevention of Significant Deterioration		
Section 509.A .....	12/20/2005	Sections 509.A.1., 509.A.2., 509.A.3., 509.A.4., 509.A.4.a–f., 509.A.5., 509.A.6.
Section 509.A .....	5/5/2006	Section 509.A.3.
Section 509.A .....	11/09/2007	Section 509.A.4.f.
Section 509.A .....	5/16/2011	Reference to previously SIP approved submittal PM <sub>2.5</sub> NAAQS.
Section 509.B .....	7/25/1997	Section 509.B. Definitions. <i>Baseline Area.2</i> .
Section 509.B .....	6/22/1998	Section 509.B. Definitions. <i>Reconstruction</i> .
Section 509.B .....	1/27/2003	Section 509.B.2.
Section 509.B .....	12/20/2005	Sections 509.B. Definitions. <i>Actual Emissions</i> , <i>Adverse Impact on Visibility</i> , <i>Allowable Emissions</i> , <i>Baseline Area</i> , <i>Baseline Concentration</i> , <i>Baseline Date</i> , <i>Begin Actual Construction</i> , <i>Best Available Control Technology</i> , <i>Building</i> , <i>Structure</i> , <i>Facility or Installation</i> , <i>Clean Air Act</i> , <i>Clean Coal Technology</i> , <i>Clean Coal Technology Demonstration Project</i> , <i>Clean Unit</i> , <i>Commence</i> , <i>Complete</i> , <i>Construction</i> , <i>Continuous Emissions Monitoring System</i> , <i>Continuous Emissions Rate Monitoring System</i> , <i>Continuous Parameter Monitoring System</i> , <i>Electric Utility Steam Generating Unit</i> , <i>Emissions Unit</i> , <i>Federal Land Manager</i> , <i>Federally Enforceable</i> , <i>Fugitive Emissions High Terrain</i> , <i>Indian Governing Body</i> , <i>Indian Reservation Innovative Control Technology</i> , <i>Low Terrain</i> , <i>Lowest Achievable Emission Rate</i> , <i>Major Modification</i> , <i>Major Stationary Source</i> , <i>Necessary Preconstruction Approvals</i> , <i>Pollution Control Project</i> , <i>Pollution Prevention</i> , <i>Potential to Emit</i> , <i>Predictive Emissions Monitoring System</i> , <i>Prevention of Significant Deterioration</i> , <i>Project</i> , <i>Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit</i> , <i>Reasonably Available Control Technology</i> , <i>Regulated NSR Pollutant</i> , <i>Replacement Unit</i> , <i>Repowering</i> , <i>Reviewing Authority</i> , <i>Significant</i> , <i>Significant Emissions Increase Stationary Source</i> , and <i>Temporary Clean Coal Technology Demonstration Project</i> .
Section 509.B .....	11/9/2007	Sections 509.B. definitions <i>Major Modification</i> , <i>Major Stationary Source</i> , <i>Regulated NSR Pollutant</i> , and <i>Significant</i> .
Section 509.B .....	5/16/2011	Section 509.B. Definitions— <i>Malfunctions</i> —repeal, <i>Regulated New Source Review (NSR) Pollutant</i> , <i>Significant a</i> .
Section 509.B .....	2/27/2013	Section 509.B. Definitions. <i>Baseline Area</i> , <i>Baseline Date</i> , <i>Minor Source Baseline Date</i> .
Section 509.C .....	12/20/2005	Sections 509.C.
Section 509.C .....	2/27/2013	Sections 509.C. Ambient Air Increments.
Section 509.D .....	6/22/1998	Section 509.D.17.
Section 509.D .....	12/20/2005	Sections 509.D., 509.D.1.–2.
Section 509.E .....	12/20/2005	Sections 509.E., 509.E.1.–4.
Section 509.G .....	12/20/2005	Sections 509.G., 509.G.1.–4.
Section 509.H .....	12/20/2005	Sections 509.H., 509.H.1.–2.
Section 509.I .....	12/20/2005	Sections 509.I., 509.I.1.–9.
Section 509.I .....	11/9/2007	Sections 509.I.5.a., approving renumbering only because substantively it has already been addressed.
Section 509.I .....	2/27/2013	Sections 509.I.5., 509.I.5.a., 509.I.8., 509.I.9., 509.I.9.b.
Section 509.J .....	12/20/2005	Sections 509.J., 509.J.1.–4.
Section 509.J .....	2/27/2013	Sections 509.J., 509.J.5., 509.J.5.a.,
Section 509.K .....	12/20/2005	Sections 509.K., 509.K.1.–2.
Section 509.K .....	2/27/2013	Sections 509.K., 509.K.1., 509.K.1.a.–b.
Section 509.L .....	12/20/2005	Sections 509.L., 509.L.1.–2.
Section 509.M .....	12/20/2005	Sections 509.M., 509.M.1.–3.
Section 509.N .....	12/20/2005	Sections 509.N., 509.N.1.–2.
Section 509.O .....	12/20/2005	Sections 509.O.1.–3.
Section 509.O .....	5/5/2006	Section 509.O.3.
Section 509.P .....	12/20/2005	Sections 509.P, 509.P. 1.–8.
Section 509.P .....	2/27/2013	Section 509.P.5.
Section 509.Q .....	2/2/2000	Sections 509.Q.7., 509.Q.8.b.
Section 509.Q .....	12/20/2005	Sections 509.Q., 509.Q.1.–2.
Section 509.R .....	12/20/2005	Sections 509.R., 509.R.1.–7.
Section 509.V .....	12/20/2005	Sections 509.V., 509.V.1.–4.

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

Section	Date submitted to EPA as SIP amendment	Affected regulation
Section 509.W .....	12/20/2005	Sections 509.W., 509.W.1.–4.
Section 509.X .....	12/20/2005	Sections 509.X., 509.X.1.–9.
Section 509.Y .....	12/20/2005	Sections 509.Y., 509.Y.1.–11.
Section 509.Z .....	12/20/2005	Sections 509.Z., 509.Z.1.–6.
Section 509.AA .....	12/20/2005	Sections 509.AA., 509.AA.1.–15.
Section 603—Applicability		
Section 603 .....	2/2/2000	Section 603, no longer in front of EPA—superseded.
Section 603.A .....	8/14/2009	Section 603.A.
Section 605		
Section 605.A .....	8/14/2009	Section 605.A. Definitions <i>Offset</i> .
Section 607—Determination of Creditable Emission Reductions		
Section 607.C .....	11/9/2007 8/14/2009	Sections 607.C.1, 607.C.4.a.i, and 607.C.4.a.ii. Section 607.C.4.b
Section 613—ERC Balance Sheet		
Section 613.B .....	5/5/2006	Section 613.B.
Section 613.B .....	5/5/2006	Section 613.B. (repealed).
Section 613.D .....	1/27/2003	Section 613.D.
Section 615—Schedule for Submitting Applications		
Section 615.B .....	1/27/2003	Section 615.B.
Section 615.C .....	8/14/2009	Sections 615.C., and 615.D.

We also are proposing to approve the December 25, 2005, submittal, as revised by the May 16, 2011, submittal, as part of the Louisiana NSR SIP because they meet the Major NSR reform requirements. The LDEQ also provided an October 6, 2008, letter, and a June 9, 2015, providing further clarification.

The EPA is proposing to find that the May 16, 2011, revisions to the Louisiana NNSR program at LAC 33:III.504 address all required NNSR elements for the implementation of the 1997 and 2006 PM<sub>2.5</sub> NAAQS. We note that the Louisiana NNSR program does not include regulation of VOCs and ammonia as PM<sub>2.5</sub> precursors. However, as section 189(e) of the Act requires regulation of PM<sub>2.5</sub> precursors that significantly contribute to PM<sub>2.5</sub> levels “which exceed the standard in the area” and Louisiana does not have a designated PM<sub>2.5</sub> nonattainment area; the revisions addressing only SO<sub>2</sub> and NO<sub>x</sub> are not inconsistent with the requirements of the CAA. In the event that an area is designated nonattainment for the 2012 PM<sub>2.5</sub> NAAQS or any other future PM<sub>2.5</sub> NAAQS, Louisiana will have a deadline under section 189(a)(2) of the CAA to make a submission addressing the statutory requirements as to that area, including the requirements

in section 189(e) that apply to the regulation of PM<sub>2.5</sub> precursors.

The EPA invites the public to make comments on all aspects of our proposed full approval of the Louisiana Air Permit Procedure Program, and to submit them by the Date listed above. We are accepting comments on this proposed action for 30 days. After reviewing the comments received, we will make a final determination of the approvability of the specified revisions to the Louisiana Major Air Permit Procedures and Regulations and Control of Emissions through the Use of Emission Reduction Credits (ERC) Banking Revisions in the **Federal Register**.

#### IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Louisiana regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the EPA Region 6 office.

#### V. Statutory and Executive Order Reviews.

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described



in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

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

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

Dated: August 5, 2015.

**Ron Curry,**

*Regional Administrator, Region 6.*

[FR Doc. 2015-20504 Filed 8-18-15; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2012-0205; FRL-9931-37-Region 6]

### Approval and Promulgation of Implementation Plans; Texas; El Paso Particulate Matter Contingency Measures

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve under the Federal Clean Air Act (CAA) State Implementation Plan (SIP) revisions submitted by the State of Texas. These revisions pertain to contingency measures for particulate matter in the City of El Paso. The affected contingency measures are the paving of alleys and sweeping of streets.

**DATES:** Written comments must be received on or before September 18, 2015.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2012-0205, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov). Follow the online instructions.
- *Email:* Jeffrey Riley at [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov).
- *Mail or delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

**Instructions:** Direct your comments to Docket ID No. EPA-R06-OAR-2012-0205. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit electronically any information that you consider to be CBI or other information whose disclosure is restricted by statute. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means that the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption

and should be free of any defects or viruses. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional information on submitting comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Riley, 214-665-8542, [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov). To inspect the hard copy materials, please schedule an appointment with Mr. Riley or Mr. Bill Deese at 214-665-7253.

#### SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we", "us", or "our" is used, we mean the EPA.

### I. Background

#### A. El Paso PM<sub>10</sub> History

Under the 1990 CAA Amendments, the City of El Paso, Texas was designated by operation of law as nonattainment of the 1987 National Ambient Air Quality Standard (NAAQS) for particulate matter (PM) with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM<sub>10</sub>) and classified as a moderate nonattainment area. The EPA approved on January 18, 1994 at 59 FR 02532, the El Paso PM<sub>10</sub> Attainment Demonstration SIP revision. The SIP included, among other things, PM control measures and a Memorandum of Understanding between the City of El Paso and the State of Texas (MOU). The EPA approved three types of PM control measures as contingency measures because they went beyond reasonably available control measures and were not relied upon to show attainment or reasonable further progress (RFP). The three types of PM control measures approved as contingency measures were prescribed burning, residential burning, and fugitive dust control measures. The fugitive dust measures include not only controls for roads, streets, alleys,