

States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 26, 2012. 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, which approves revisions to regulation COMAR 26.11.19.23, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 30, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 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 V—Maryland

- 2. In § 52.1070, the table in paragraph (c) is amended by revising the entry for COMAR 26.11.19.23 to read as follows:

§ 52.1070 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
*	*	*	*	*
26.11.19 Volatile Organic Compounds From Specific Processes				
*	*	*	*	*
26.11.19.23	Control of VOC Emissions from Vehicle Refinishing.	4/16/12	9/26/12 [Insert page number where the document begins].	Entire regulation revised.
*	*	*	*	*

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[FR Doc. 2012–23572 Filed 9–25–12; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0081; FRL–9728–2]

Approval and Promulgation of Implementation Plans; Mississippi: New Source Review-Prevention of Significant Deterioration; Fine Particulate Matter (PM_{2.5})

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve changes to the Mississippi State Implementation Plan (SIP), submitted by the Mississippi Department of Environmental Quality (MDEQ) Division of Air Pollution Control to EPA on May 12, 2011. The May 12, 2011, SIP revision modifies Mississippi’s New Source Review (NSR) Prevention of Significant Deterioration (PSD)

permitting regulations to incorporate by reference, into the Mississippi SIP, federal NSR PSD requirements for the fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS) as promulgated in EPA’s 2008 NSR PM_{2.5} Implementation Rule and the 2010 PM_{2.5} PSD Increment, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC) Rule. EPA is approving portions of Mississippi’s May 12, 2011, SIP revision because they are consistent with the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting. **DATES:** *Effective Date:* This rule will be effective October 26, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0081. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, *i.e.*, 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 www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Mississippi SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Bradley’s telephone number is (404) 562–9352; email address: bradley.twunjala@epa.gov. For information regarding NSR, contact Ms.

Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone number is (404) 562-9214; email address: adams.yolanda@epa.gov. For information regarding the PM_{2.5} NAAQS, contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Mr. Huey's telephone number is (404) 562-9104; email address: huey.joel@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

EPA is taking final action on portions of Mississippi's May 12, 2011, SIP revision to incorporate by reference (IBR)¹ federal requirements for NSR permitting. Mississippi's May 12, 2011, SIP revision includes changes to its air quality regulations in Air Pollution Control, Section 5 (APC-S-5)—

Regulations for the Prevention of Significant Deterioration of Air Quality. The May 12, 2011, changes IBR federal PSD permitting regulations promulgated in the final rulemakings entitled "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})," 73 FR 28321 (May 16, 2008), hereafter referred to as the "NSR PM_{2.5} Rule," and "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels SILs and Significant Monitoring Concentration (SMC)," 75 FR 64864 (October 20, 2010) hereafter referred to as the "PM_{2.5} PSD Increment-SILs-SMC Rule"). Additionally, Mississippi's SIP revision requests that EPA remove from the SIP the exclusion language at APC-S-5 (2.7) regarding the NSR PM_{2.5} Rule provisions. EPA is not approving in this action: (1) incorporation of the SIL thresholds and provisions promulgated in EPA's PM_{2.5} PSD Increment-SILs-SMC Rule, 75 FR 64864 (October 20, 2010); and (2) incorporation of the provision regarding the applicability of the term "particulate matter emissions" when accounting for condensable particles in applicability determinations and in establishing emissions limitations in PSD permits.²

¹ Throughout this document IBR means incorporate or incorporates by reference.

² Today's final action approves the incorporation by reference of 40 CFR 52.21 into the Mississippi SIP as of March 22, 2011 apart from the exclusions stated in this final rulemaking and at 40 CFR 52.1270(c). Any previous EPA exclusions to APS-S-5 at 40 CFR 52.1270(c) remain in effect.

On July 23, 2012, EPA published a proposed rulemaking to approve the aforementioned changes to Mississippi's NSR PSD program at APC-S-5. See 77 FR 43032. Comments on the proposed rulemaking were due on or before August 22, 2012. No comments, adverse or otherwise, were received on EPA's July 23, 2012, proposed rulemaking. Pursuant to section 110 of the CAA, EPA is now taking final action to approve the changes to Mississippi's NSR PSD program as provided in EPA's July 23, 2012, proposed rulemaking. A summary of the background for today's final action is provided below. EPA's July 23, 2012, proposed rulemaking contains more detailed information regarding the Mississippi SIP revision being approved today, and the rationale for today's final action. Detailed information regarding the PM_{2.5} NAAQS and NSR Program can also be found in EPA's July 23, 2012, proposed rulemaking as well as the abovementioned final rulemakings.

A. NSR PM_{2.5} Rule

EPA finalized the NSR PM_{2.5} Rule on May 16, 2008, which revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the PM_{2.5} NAAQS in both attainment areas and nonattainment areas (NAAs) that: (1) Require NSR permits to address directly emitted PM_{2.5} and precursor pollutants; (2) establish significant emission rates for direct PM_{2.5} and precursor pollutants (including sulfur dioxide (SO₂) and nitrogen oxides (NO_x)); (3) establish PM_{2.5} emission offsets; (4) provide exceptions to the grandfathering policy for permits being reviewed under the PM₁₀ surrogate program; and (5) require states to account for gases that condense to form particles (condensables) in PM_{2.5} and PM₁₀ emission limits in PSD or nonattainment NSR (NNSR) permits. Additionally, the NSR PM_{2.5} Rule authorized states to adopt provisions in their NNSR rules that would allow interpollutant offset trading. See 73 FR 28321. States were required to provide SIP submissions to address the requirements for the NSR PM_{2.5} Rule by May 16, 2011. Mississippi's May 12, 2011, SIP revision addresses only the PSD requirements related to EPA's May 16, 2008, NSR PM_{2.5} Rule.³

³ Mississippi's May 12, 2011, SIP revision only addresses the State's PSD permitting program and does not adopt the NNSR permitting requirements for PM_{2.5} emission offsets, condensable provision or the discretionary interpollutant trading policy and ratios promulgated in the 2008 NSR PM_{2.5} Rule. Moreover, Mississippi is attainment for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS.

1. PM₁₀ Surrogate and Grandfathering Policy

In the NSR PM_{2.5} Rule, EPA required that major stationary sources seeking permits must begin directly satisfying the PM_{2.5} requirements, as of the effective date of the rule, rather than relying on PM₁₀ as a surrogate, with two exceptions.⁴ The first exception is a "grandfathering" provision in the federal PSD program at 40 CFR 52.21(i)(1)(xi). This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008, effective date of the May 2008 final rule. The second exception was that states with SIP-approved PSD programs could continue to implement the Seitz Memo's PM₁₀ Surrogate Policy for up to three years (until May 2011) or until the individual revised state PSD programs for PM_{2.5} are approved by EPA, whichever comes first. On May 18, 2011 (76 FR 28646), EPA took final action to repeal the grandfathering provision at 40 CFR 52.21(i)(1)(xi). This final action ended the use of the 1997 PM₁₀ Surrogate Policy for PSD permits under the federal PSD program at 40 CFR 52.21. In effect, any PSD permit applicant previously covered by the grandfathering provision (for sources that completed and submitted a permit application before July 15, 2008)⁵ that did not have a final and effective PSD permit before the effective date of the repeal will not be able to rely on the 1997 p.m.₁₀ Surrogate Policy to satisfy the PSD requirements for PM_{2.5} unless the application includes a valid surrogacy demonstration.⁶ See 76 FR

⁴ After EPA promulgated the NAAQS for PM_{2.5} in 1997, the Agency issued guidance documents related to using PM₁₀ as a surrogate for PM_{2.5} entitled: "Interim Implementation of New Source Review Requirements for PM_{2.5}," John S. Seitz, EPA, October 23, 1997 (the "Seitz Memo") and "Implementation of New Source Review Requirements in PM_{2.5} Nonattainment Areas" (the "2005 PM_{2.5} NNSR Guidance"). The Seitz Memo was designed to help states implement NSR requirements pertaining to the new PM_{2.5} NAAQS in light of technical difficulties posed by PM_{2.5} at that time. The 2005 PM_{2.5} NNSR Guidance provided direction regarding implementation of the NNSR provisions in PM_{2.5} NAA in the interim period between the effective date of the PM_{2.5} NAA designations (April 5, 2005) and EPA's promulgation of final PM_{2.5} NNSR regulations (this included recommending that until EPA promulgated the PM_{2.5} major NSR regulations, "States should use a PM₁₀ nonattainment major NSR program as a surrogate to address the requirements of nonattainment major NSR for the PM_{2.5} NAAQS.").

⁵ Sources that applied for a PSD permit under the federal PSD program on or after July 15, 2008, are already excluded from using the 1997 PM₁₀ Surrogate Policy as a means of satisfying the PSD requirements for PM_{2.5}. See 76 FR 28321.

⁶ Additional information on this issue can also be found in an August 12, 2009, final order on a title

28646. In its May 12, 2011, SIP revision, Mississippi did not adopt the grandfathering provision at 40 CFR 52.21(i)(1)(xi) into its PSD regulations. Therefore, Mississippi's SIP is consistent with current federal regulations regarding the repeal of the grandfathering provision.

2. "Condensable" Provision

In the NSR PM_{2.5} Rule, EPA revised the definition of "regulated NSR pollutant" for PSD to add a paragraph providing that "particulate matter (PM) emissions, PM_{2.5} emissions and PM₁₀ emissions" shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures and that on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM_{2.5} and PM₁₀ in permits issued. See 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(vi) and "Emissions Offset Interpretative Ruling" (40 CFR Part 51, Appendix S). On March 16, 2012, EPA proposed a rulemaking to amend the definition of "regulated NSR pollutant" promulgated in the NSR PM_{2.5} Rule regarding the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i) and EPA's Emissions Offset Interpretative Ruling. See 77 FR 15656. The rulemaking proposes to remove the inadvertent requirement in the NSR PM_{2.5} Rule that the measurement of condensable "particulate matter emissions" be included as part of the measurement and regulation of "particulate matter emissions."⁷ Mississippi's May 12, 2011, SIP revision adopts EPA's definition for "regulated NSR pollutant" for condensables (at 40 CFR 51.166(b)(49)(vi)), including the term "particulate matter emissions," as promulgated in the NSR PM_{2.5} Rule. On June 26, 2012, the State of Mississippi provided a letter to EPA clarifying the State's intent in light of EPA's March 12, 2012, proposed rulemaking and requesting that EPA not approve into the Mississippi SIP the term "particulate matter emissions" (as part

⁷ Petition describing the use of PM₁₀ as a surrogate for PM_{2.5}. In the Matter of *Louisville Gas & Electric Company*, Petition No. IV-2008-3, Order on Petition (August 12, 2009).

⁸ The term "particulate matter emissions" includes particles that are larger than PM_{2.5} and PM₁₀ and is an indicator measured under various New Source Performance Standards (NSPS) at 40 CFR part 60. In addition to the NSPS for PM, it is noted that states have regulated "particulate matter emissions" for many years in their SIPs for PM, and the same indicator has been used as a surrogate for determining compliance with certain standards contained in 40 CFR part 63, regarding National Emission Standards for Hazardous Air Pollutants.

of the definition for "regulated NSR pollutant") regarding the inclusion of condensable emissions in applicability determinations and in establishing emissions limitations for PM.

3. NO_x Insignificance Demonstration

In addition to direct PM_{2.5} emissions, pollutants that can contribute to ambient PM_{2.5} concentrations (known as "precursors") include SO₂, NO_x, volatile organic compounds (VOC) and ammonia (all of which undergo chemical reactions to form secondary PM). In the NSR PM_{2.5} Rule, EPA established a "presumed-in" approach for NO_x as a PM_{2.5} precursor. This approach is warranted based on the well-known transformation of NO_x into nitrates, coupled with the fact that nitrate concentrations vary significantly around the country. The final NSR PM_{2.5} Rule requires that states treat NO_x as a PM_{2.5} precursor in all areas unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of NO_x from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.⁸ See 40 CFR 51.166(b)(49)(i), 51.165(a)(1)(xxxvii) and 52.21(b)(50)(i). If EPA makes such a demonstration, or a state makes such a demonstration and it is approved by EPA, NO_x would not be considered a PM_{2.5} precursor under the NSR program in that area. If a State or EPA does not make such a demonstration, NO_x must be regulated as a precursor under the PSD, NNSR, and minor source programs for PM_{2.5}. Mississippi's May 12, 2011, SIP revision IBR the provision that NO_x is presumed to be a precursor for PM_{2.5}. However, MDEQ also submitted to EPA a NO_x insignificance demonstration to show that NO_x emissions in the State of Mississippi are not contributing significantly to ambient PM_{2.5} concentrations in the State. At this time, EPA is still considering Mississippi's NO_x insignificance demonstration and will take action on this portion of MDEQ's May 12, 2011, SIP revision in a separate rulemaking.

B. PM_{2.5} PSD Increment SILs-SMC Rule

The PM_{2.5} PSD Increment-SILs-SMC Rule provided additional regulatory requirements under the PSD program regarding the implementation of the PM_{2.5} NAAQS for NSR, including (1)

⁸ The NSR PM_{2.5} Rule presumes that VOC and ammonia are not precursors to PM_{2.5} unless a state or EPA demonstrates that these pollutants are significantly contributing to the ambient PM_{2.5} concentrations in a specific area. The rule requires that SO₂ be treated as a precursor to PM_{2.5} in all areas.

PM_{2.5} increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS; (2) SILs used as a screening tool (by a major source subject to PSD) to evaluate the impact a proposed major source or modification may have on the NAAQS or PSD increment; and (3) a SMC, (also a screening tool) used by a major source subject to PSD to determine the subsequent level of data gathering required for a PSD permit application for emissions of PM_{2.5}. The SILs and SMC are numerical values that represent thresholds of insignificant, *i.e.*, *de minimis*,⁹ modeled source impacts or monitored (ambient) concentrations, respectively. EPA established such values to be used as screening tools by a major source subject to PSD to determine the subsequent level of PM_{2.5} analysis and data gathering required for a PSD permit application. EPA's authority to implement the SILs and SMC for PSD purposes has been challenged by the Sierra Club. *Sierra Club v. EPA*, Case No 10-1413 (DC Circuit Court).¹⁰

1. PSD Increments

PSD increments prevent air quality in clean areas from deteriorating to the level set by the NAAQS. Therefore, an increment is the mechanism used to estimate "significant deterioration"¹¹ of air quality for a pollutant in an area. Under section 165(a)(3) of the CAA, a PSD permit applicant must demonstrate that emissions from the proposed construction and operation of a facility "will not cause, or contribute to, air pollution in excess of any maximum allowable increase or allowable concentration for any pollutant." When a source applies for a permit to emit a regulated pollutant in an area that meets the NAAQS, the state and EPA must determine if emissions of the regulated pollutant from the source will cause

⁹ The *de minimis* principle is grounded in a decision described by the court case *Alabama Power Co. v. Costle*, 636 F.2d 323, 360 (DC Cir. 1980). In this case, reviewing EPA's 1978 PSD regulations, the court recognized that "there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value." 636 F.2d at 360. See 75 FR 64864.

¹⁰ On April 6, 2012, EPA filed a brief with the DC Circuit court defending the Agency's authority to implement SILs and SMC for PSD purposes.

¹¹ Significant deterioration occurs when the amount of the new pollution exceeds the applicable PSD increment, which is the "maximum allowable increase" of an air pollutant allowed to occur above the applicable baseline concentration¹¹ for that pollutant. Section 169(4) of the CAA provides that the baseline concentration of a pollutant for a particular baseline area is generally the air quality at the time of the first application for a PSD permit in the area.

significant deterioration in air quality. As described in the PM_{2.5} PSD Increment-SILs-SMC Rule, pursuant to the authority under section 166(a) of the CAA, EPA promulgated numerical PSD increments for PM_{2.5} as a new pollutant¹² for which NAAQS were established after August 7, 1977,¹³ and derived 24-hour and annual PM_{2.5} increments for the three area classifications (Class I, II and III) using the “contingent safe harbor” approach. See 75 FR 64869 and ambient air increment tables at 40 CFR 51.166(c)(1) and 52.21(c). In addition to PSD increments for the PM_{2.5} NAAQS, the PM_{2.5} PSD Increment-SILs-SMC Rule amended the definition at 40 CFR 51.166 and 52.21 for “major source baseline date” and “minor source baseline date” (including trigger date) to establish the PM_{2.5} NAAQS specific dates associated with the implementation of PM_{2.5} PSD increments. See 75 FR 64864.

2. Significant Monitoring Concentrations

As mentioned above, the SMC numerical value represents a threshold of insignificant (*i.e.*, *de minimis*) monitored ambient impacts on pollutant concentrations. In the PM_{2.5} PSD Increment-SILs-SMC Rule, EPA established a PM_{2.5} SMC of 4 µg/m³ to be used as a screening tool by a major source subject to PSD to determine the subsequent level of PM_{2.5} data gathering required for a PSD permit application. Using the SMC as a screening tool, sources may be able to demonstrate that the modeled air quality impact of emissions from the new source or modification, or the existing air quality level in the area where the source would construct, is less than the SMC (*i.e.*, *de minimis*), and as such, may be allowed to forego the preconstruction monitoring requirement for a particular pollutant at the discretion of the reviewing authority.

Recently, the Sierra Club filed suit challenging EPA’s authority to implement the PM_{2.5} SILs¹⁴ as well as

¹² EPA generally characterized the PM_{2.5} NAAQS as a NAAQS for a new indicator of PM. EPA did not replace the PM₁₀ NAAQS with the NAAQS for PM_{2.5} when the PM_{2.5} NAAQS were promulgated in 1997. EPA rather retained the annual and 24-hour NAAQS for PM_{2.5} as if PM_{2.5} was a new pollutant even though EPA had already developed air quality criteria for PM generally. See 75 FR 64864 (October 20, 2012).

¹³ EPA interprets 166(a) to authorize EPA to promulgate pollutant-specific PSD regulations meeting the requirements of section 166(c) and 166(d) for any pollutant for which EPA promulgates a NAAQS after 1977.

¹⁴ As mentioned earlier, due to litigation by the Sierra Club, EPA is not taking final action on the SILs portion of the Mississippi May 12, 2011, SIP

the SMC for PSD purposes as promulgated in the October 20, 2012, rule. *Sierra Club v. EPA*, Case No. 10–1413, DC Circuit Court. Specifically, regarding the SMC, Sierra Club claims that the use of SMCs to exempt a source from submitting a year’s worth of monitoring data is inconsistent with the CAA. EPA responded to Sierra Club’s claims in a Brief dated April 6, 2012, which describes the Agency’s authority to develop and promulgate SMC.¹⁵ A copy of EPA’s April 6, 2010, Brief can be found in the docket for today’s final rulemaking at www.regulations.gov using docket ID: EPA–R04–OAR–2012–0081.

II. This Action

EPA is taking final action to approve into the Mississippi SIP portions of the State’s May 12, 2011, SIP revision, which IBR the PSD permitting regulations to implement the PM_{2.5} NAAQS. Mississippi’s regulation APC–S–5 IBR the federal NSR PSD regulations at 40 CFR 51.166 and 52.21 into the Mississippi SIP. In effect, MDEQ’s May 12, 2011, SIP revision updates the State’s IBR date for APC–S–5 to March 22, 2011, to include PSD permitting regulations promulgated in the NSR PM_{2.5} Rule and the PM_{2.5} PSD Increment-SILs-SMC Rule in the Mississippi SIP. These changes to Mississippi’s regulation APC–S–5 became state effective on June 2, 2011. MDEQ’s SIP revision IBR the NSR PM_{2.5} Rule PSD provisions at regulation APC–S–5, including: (1) The requirement for NSR permits to address directly emitted PM_{2.5} and precursor pollutants; (2) significant emission rates for direct PM_{2.5} and precursor pollutants (SO₂ and NO_x) and establishing PM_{2.5} precursors (as amended at 40 CFR 51.166(b)(23)(i)) for the definition of “significant” and “regulated NSR pollutant,” respectively; and (3) PSD requirement for states to address condensable PM in establishing enforceable emission limits for PM₁₀ and PM_{2.5} (as amended at definition of “regulated NSR pollutant” at 40 CFR 51.166(b)(49)).

Regarding the condensable provision, in light of Mississippi’s request in its June 26, 2012, letter and EPA’s intention to amend the definition of “regulated NSR pollutant” as discussed in the

revision at this time but will take action once the court case regarding SILs implementation is resolved.

¹⁵ Additional information on this issue can also be found in an April 25, 2010, comment letter from EPA Region 6 to the Louisiana Department of Environmental Quality regarding the SILs-SMC litigation. A copy of this letter can be found in the docket for today’s rulemaking at www.regulations.gov using docket ID: EPA–R04–OAR–2012–0081.

March 12, 2012, correction rulemaking, EPA is not taking final action to approve the terminology “particulate matter emissions” into the Mississippi SIP (at APC–S–5) for the condensable provision in the definition of “regulated NSR pollutant.” See 77 FR 15656. EPA is, however, taking final action to approve into the Mississippi SIP the remaining condensable requirement at 40 CFR 51.166(b)(49)(vi), which requires that condensable emissions be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀. Mississippi’s May 12, 2011, SIP revision did not IBR the grandfathering provision at 40 CFR 52.21(i)(1)(xi) in accordance with the repeal of the PM_{2.5} grandfathering provision. Rather, the SIP revision includes new language at APC–S–5(2.7) that excludes the provision for PM_{2.5} (at 40 CFR 52.21(i)(1)(xi)) from the PSD program regulations.

As stated in Mississippi’s May 12, 2011, SIP revision, NO_x will be considered a precursor to PM_{2.5} in Mississippi until such time as EPA takes action on the State’s NO_x insignificance demonstration or upon plan disapproval. As part of MDEQ’s May 12, 2011, revision to IBR the federal regulations at 40 CFR 51.166 and 52.21, EPA is taking final action, at this time, to approve into the Mississippi SIP that NO_x is a presumed PM_{2.5} precursor. EPA is considering Mississippi’s NO_x insignificance demonstration and will take action on this portion of the May 12, 2011, SIP submission in a separate rulemaking. Mississippi’s May 12, 2011, SIP revision also removes from APC–S–5(2.7) language that excludes NSR PM_{2.5} Rule permitting requirements from inclusion into the Mississippi SIP.¹⁶ Because MDEQ’s May 12, 2011, SIP revision adopts the aforementioned provisions promulgated in the May 16, 2008, NSR PM_{2.5} Rule, the exclusion language is no longer necessary.

With respect to the PM_{2.5} PSD Increment-SILs SMC Rule, EPA is taking final action to also approve into the Mississippi SIP the PSD increments for PM_{2.5} annual and 24-hour NAAQS pursuant to section 166(a) of the CAA and SMC of 4 µg/m³ for PM_{2.5} NAAQS. The May 12, 2011, SIP revision IBR the PM_{2.5} increments established in the ambient air increment tables at 40 CFR 51.166(c)(1) and (p)(4) and 52.21(c); the amendments to the “major source

¹⁶ In Mississippi’s December 9, 2010, Greenhouse Gas Tailoring Rule final SIP revision, MDEQ added specific language at APC–S–5(2.7) excluding from the IBR of 40 CFR 52.21 the PSD NSR PM_{2.5} Rule provisions promulgated in the May 16, 2008, rule and stated they would submit a separate rulemaking to address those PSD requirements.

baseline date” (at 40 CFR 51.166(b)(14)(i)(c) and 52.21(b)(14)(i)(c)); the “minor source baseline date” and establishment of the “trigger date” (40 CFR 51.166(b)(14)(ii)(c) and 52.21(b)(14)(ii)(c)); and the definition of “baseline area” (at 40 CFR 51.166(b)(15)(i) and (ii) and 52.21(b)(15)(i) and (ii)).

Regarding the SILs and SMC, EPA’s authority to implement the PM_{2.5} SILs and SMC is currently the subject of litigation by the Sierra Club. In a brief filed in the DC Circuit on April 6, 2012, EPA described the Agency’s authority under the CAA to promulgate and implement the SMCs and SILs *de minimis* thresholds. *Sierra Club v. EPA*, Case No 10–1413 DC Circuit. However, EPA is finalizing approval of the promulgated SMC thresholds into the Mississippi SIP because the Agency believes the SMC is a valid exercise of the Agency’s *de minimis* authority as well as the fact they are consistent with EPA’s promulgated levels in the PM_{2.5} PSD Increment-SILs-SMC Rule. The ongoing litigation may result in the court decision that may require subsequent rule revisions and SIP revisions from Mississippi.

In response to the litigation, EPA requested that the court remand and vacate the new regulatory text at 40 CFR 51.166(k)(2) and 52.21(k)(2) concerning the implementation of SILs for PM_{2.5} so that EPA can make necessary rulemaking revisions to that text.¹⁷ In light of EPA’s request for remand and vacatur and our acknowledgement of the need to revise the regulatory text presently contained at paragraph (k)(2) of sections 51.166 and 52.21, the Agency has determined at this time not to approve the SILs portion of the MDEQ’s May 12, 2011, SIP revision that contains the affected regulatory text in Mississippi’s PSD regulations at APC–S–5. EPA will take action on the SILs portion of Mississippi’s May 12, 2011, SIP revision in a separate rulemaking once the issue regarding the court case has been resolved.¹⁸

¹⁷ In the preamble to the October 20, 2010, final rule EPA indicates that the Agency does not consider the SILs to be a mandatory SIP element, but regard them as discretionary on the part of regulating authority for use in the PSD permitting process. See 75 FR 64864 at 64899.

¹⁸ EPA is currently developing guidance to provide provisional course of action to implement the PM_{2.5} SILs pending revision to the (k)(2) provisions and the litigation. The guidance will ensure that the PM_{2.5} SILs are properly applied as part of a PSD compliance demonstration to show that a source’s impact will not cause or contribute to a violation of the PM_{2.5} NAAQS or increment.

III. Final Action

EPA is taking final action to approve portions of Mississippi’s May 12, 2011, SIP revisions (with the exception of the term “particulate matter emissions” and the SILs threshold and provisions) that IBR federal regulations amended in the NSR PM_{2.5} and the PM_{2.5} PSD Increment-SILs-SMC Rules to implement the PM_{2.5} NAAQS for the NSR program because they are consistent with section 110 of the CAA and its regulations regarding NSR permitting.

IV. 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, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 26, 2012. 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).

List of Subjects in 40 CFR Part 52

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

Dated: September 6, 2012.

A. Stanley Meiburg,
Acting Regional Administrator, Region 4.

40 CFR part 52 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 Z—Mississippi

§ 52.1270 Identification of plan.

■ 2. Section 52.1270(c) is amended by revising entry “APC–S–5” to read as follows:

* * * * *
(c) * * *

EPA-APPROVED MISSISSIPPI REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
APC–S–5—Regulations for Prevention of Significant Deterioration for Air Quality				
All	06/2/2011	9–26–12 [Insert citation of publication].	As of 9–26–2012 EPA is approving a revision to APC–S–5 incorporating by reference the regulations found at 40 CFR 52.21 as of March 22, 2011. See [Insert citation of publication]. This approval does not include Mississippi’s revision to IBR (at Rule APC–S–5) the term “particulate matter emissions” (as promulgated in the May 16, 2008 NSR PM _{2.5} Rule (at 40 CFR 51.166(b)(49)(vi)) and the PM _{2.5} SILs threshold and provisions (as promulgated in the October 20, 2010 PM _{2.5} PSD Increment-SILs-SMC Rule at 40 CFR 52.21(k)(2)). On December 29, 2010, EPA approved a revision to APC–S–5 which incorporated by reference the regulations found at 40 CFR 52.21 as of September 13, 2010. See 75 FR 81858. That action approved the incorporation by reference with the exception of the phrase “except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140,” APC–S–5 incorporated by reference from 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t). Additionally, that final EPA action did not incorporate by reference, into the Mississippi SIP, the administrative regulations that were amended in the Fugitive Emissions Rule (73 FR 77882) and are stayed through October 3, 2011.

* * * * *
[FR Doc. 2012–23570 Filed 9–25–12; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0079; FRL–9731–5]

Approval and Promulgation of Implementation Plans; Alabama: General and Transportation Conformity & New Source Review Prevention of Significant Deterioration for Fine Particulate Matter (PM_{2.5})

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve changes to the Alabama State Implementation Plan (SIP), submitted by the Alabama Department of Environmental Management (ADEM) to EPA on May 2, 2011. The May 2, 2011, SIP revision modifies Alabama’s New Source Review (NSR), Prevention of Significant Deterioration (PSD), and

Nonattainment New Source Review (NNSR) programs to adopt into the Alabama SIP federal NSR PSD requirements for the fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS) as promulgated in EPA’s 2008 NSR PM_{2.5} Implementation Rule and the 2010 PM_{2.5} PSD Increment, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC) Rule. The SIP revision also changes the State’s general and transportation conformity regulations. EPA is approving portions of Alabama’s May 2, 2011, SIP revision because they are consistent with the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting. EPA received one off-topic comment on the August 6, 2012, proposed rulemaking, and a brief response is provided below.

DATES: *Effective Date:* This rule will be effective October 26, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0079. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index,

some information is not publicly available, *i.e.*, 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 www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Florida SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S.