■ 11. Section 966.13 is revised to read as follows:

§ 966.13 Ex parte communications.

Ex parte communications are not allowed between a party and the Hearing Official or the Official's staff. For these purposes, ex parte communication means an oral or written communication, not on the public record, with one party only with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports or procedural matters. A memorandum of any communication between the Hearing Official and a party will be transmitted to both parties.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2003–0062; FRL–9742–8]

RIN 2060–AR30

Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$): Amendment to the Definition of ''Regulated NSR Pollutant'' Concerning Condensable Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is issuing a final rule that revises the definition of ''regulated NSR pollutant'' contained in two sets of Prevention of Significant Deterioration (PSD) regulations and in the EPA's Emission Offset Interpretative Ruling. The revision corrects an inadvertent error made in 2008 when the EPA issued its rule to implement the New Source Review (NSR) program for fine particles with an aerodynamic diameter of less than or equal to 2.5 micrometers ($PM_{2.5}$). This revision removes a general requirement in the definition of ''regulated NSR pollutant'' to include condensable PM when measuring one of the emissions-related indicators for particulate matter (PM) known as ''particulate matter emissions'' in the context of the PSD and NSR regulations. However, the rule preserves the requirement in some particular cases to include condensable PM in measurements of ''particulate matter emissions'' as required by other regulations. In addition, measurement of condensable PM continues to be required in all cases for two other emissions-related indicators for emissions of PM—emissions of particles with an aerodynamic diameter of less than or equal to 10 micrometers (PM_{10} emissions) and $PM_{2.5}$ emissions.

DATES: The amendments to 40 CFR parts 51 and 52 are effective December 24, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0062. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) 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 EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue, Northwest, Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Dan deRoeck, Air Quality Policy Division (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711; telephone number (919) 541–5593; fax number (919) 541–5509; or email address: *deroeck.dan@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this Supplementary Information section of this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

Entities affected by this rule include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups that emit PM:

Industry group	NAICS [a]
Electric services	221111, 221112, 221113, 221119, 221121, 221122.
Petroleum refining	32411.
Industrial inorganic chemicals	325181, 32512, 325131, 325182, 211112, 325998, 331311, 325188.
Industrial organic chemicals	32511, 325132, 325192, 325188, 325193, 32512, 325199.
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551.

Industry group	NAICS [a]
Natural gas liquids	211112.
Natural gas transport	48621, 22121.
Pulp and paper mills	32211, 322121, 322122, 32213.
Paper mills	322121, 322122.
Automobile manufacturing	336111, 336112, 336712, 336211, 336992, 336322, 336312, 33633, 33634, 33635, 336399, 336212, 336213.
Pharmaceuticals	325411, 325412, 325413, 325414.

[a] North American Industry Classification System.

Entities affected by this rule also include state, local and tribal reviewing authorities responsible for implementing Clean Air Act (CAA or Act) stationary source permitting programs.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted in the regulations and standards section of our NSR home page located at *http://www.epa.gov/nsr.*

II. Purpose

The purpose of this rulemaking is to revise the definition of ''regulated NSR pollutant'' to correct an inadvertent error contained in the regulations for PSD at 40 CFR 51.166 and 52.21, and in the EPA's Emission Offset Interpretative Ruling at 40 CFR part 51 Appendix S. This error was introduced in the revised definition of ''regulated NSR pollutant'' in the 2008 rule titled, ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$).'' *See* 73 FR 28321 (May 16, 2008). The revised definition required that particulate matter emissions, PM_{10} emissions and $PM_{2.5}$ emissions—representing three separate size ranges or indicators of particles—must include ''gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures,'' *i.e.,* condensable particulate matter (condensable PM). *See* existing 40 CFR 51.166(b)(49)(vi), part 51 Appendix S, and 52.21(b)(50)(vi). This final action removes an unintended new requirement on state and local agencies and the regulated community that ''particulate matter emissions'' must include the condensable PM fraction in all cases. As described in more detail in section IV of this preamble, in the 2008 rule we did not intend that the term ''particulate matter emissions'' be listed with ''$PM_{2.5}$ emissions'' and ''PM_{10} emissions'' to include the condensable PM fraction of primary PM. Historically, for ''particulate matter emissions'' often only the filterable fraction had been considered for NSR purposes, consistent with the applicable New Source Performance Standards (NSPS) for PM and the corresponding compliance test method.

This final action ensures that our originally-intended approach for regulating the three indicators for emissions of particulate matter under the PSD program is codified. Thus, ''PM_{10} emissions'' and ''$PM_{2.5}$ emissions'' are regulated as criteria pollutants (that is, under the portion of the definition of ''regulated NSR pollutant'' that refers to ''[a]ny pollutant for which a national ambient air quality standard has been promulgated * * *''), and are required to include the condensable PM fraction emitted by a source. *See* 40 CFR 51.166(b)(49)(i) and 52.21(b)(50)(i). By contrast, ''particulate matter emissions'' is regulated as a non-criteria pollutant under the portion of the definition that refers to ''[a]ny pollutant that is subject to any standard promulgated under section 111 of the Act,'' where the condensable PM fraction generally is not required to be included in measurements to determine compliance with standards of performance for PM. *See* 40 CFR 51.166(b)(49)(ii) and 52.21(b)(50)(ii).

III. Background

A. National Ambient Air Quality Standards (NAAQS) for PM

Sections 108 and 109 of the CAA govern the establishment and revision of the NAAQS. Section 108 directs the Administrator to identify and list each air pollutant that ''in his judgment, cause[s] or contribute[s] to air pollution which may reasonably be anticipated to endanger public health and welfare'' and ''the presence of which in the ambient air results from numerous or diverse mobile or stationary sources'' and to issue air quality criteria for those pollutants that are listed. CAA section 108(a)(1)(A), (B). Section 109 directs the Administrator to propose and promulgate primary and secondary NAAQS for pollutants listed under section 108 to protect public health and welfare, respectively. Section 109 also requires review of the NAAQS at 5-year intervals.

''Particulate matter'' is a term used to define an air pollutant that consists of a mixture of solid particles and liquid droplets found in the ambient air. Particulate matter occurs in many sizes and shapes and can be made up of hundreds of different chemicals. As explained further in the discussion that follows, the EPA has regulated several size ranges of particles under the CAA, referred to as indicators of particles, which has required that test methods be developed to measure the appropriate size particles that occur in the ambient air or that are being emitted directly from a source. In some cases, the EPA regulates certain species of particles as separate ''air pollutants.'' For example, lead, beryllium, fluorides and sulfuric acid mist are constituents of particulate matter that are also regulated separately under New Source Performance Standards (40 CFR part 60) and/or National Emissions Standards for Hazardous Air Pollutants (40 CFR parts 61, 63 or 65).

Particles as measured in the ambient air consist of both primary and secondary particles. Primary particles are emitted directly from sources, and may include gaseous emissions, which, when emitted from the stack of a source, condense under ambient conditions to form particles. Primary particles directly emitted by a source as a solid or liquid at the stack and captured on the filter of a test train are referred to as the ''filterable'' PM fraction. The gaseous emissions that form particles upon condensing under ambient conditions soon after release from the stack are referred to as ''condensable PM.'' Other types of particles, known as secondary particles, are formed from precursors, such as SO_2 and NO_X, at a distance from their point of release as a result of complex reactions in the atmosphere.

Initially, the EPA established NAAQS for PM on April 30, 1971, under sections 108 and 109 of the Act. *See* 36 FR 8186. Compliance with the original PM NAAQS was based on the measurement of particles in the ambient

air using an indicator of particles measuring up to a nominal size of 25 to 45 micrometers (μm). The EPA used the indicator name ''total suspended particulate'' or ''TSP'' to define the particle size range that was being measured. Total suspended particulate remained the indicator for the PM NAAQS until 1987 when the EPA revised the NAAQS in part by replacing the TSP indicator for both the primary and secondary standards with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 μm (PM_{10}).

On July 18, 1997, the EPA made significant revisions to the PM NAAQS in several respects. While the EPA determined that the PM NAAQS should continue to focus on particles less than or equal to 10 μm in diameter, the EPA also determined that the fine and coarse fractions of PM_{10} should be considered separately. Accordingly, on July 18, 1997, the EPA added a new indicator for fine particles with a nominal mean aerodynamic diameter less than or equal to 2.5 μm ($PM_{2.5}$), and continued to use PM_{10} as the indicator for purposes of regulating the coarse fraction of PM_{10}. *See* 62 FR 38652.

In the next periodic review, the EPA concluded, on October 17, 2006, that it was necessary to revise the primary and secondary NAAQS for PM to provide increased protection of public health and welfare. *See* 71 FR 61144. The EPA retained the two separate indicators—PM_{10} and $PM_{2.5}$—for determining compliance with the revised NAAQS for PM, so both continue to be regarded as pollutants for which a NAAQS has been promulgated.

B. Measuring and Reporting Emissions of PM

Section 110 of the Act requires that state and local air pollution control agencies develop and submit plans, known as state implementation plans or SIPs (that provide for the attainment, maintenance and enforcement of the NAAQS), for approval by the EPA. An essential component of each SIP is the emissions reduction strategy, including emissions limitations and other control measures (as set forth in SIPs and in individual source permits) designed to control the emissions of pollutants that contribute to the air quality against which the NAAQS are measured. For many years, most control measures for PM were generally focused on primary PM—specifically, the filterable PM fraction. Accordingly, the early EPA test methods for quantifying amounts of PM emitted by sources generally were based on the collection of the filterable PM fraction.

In support of state obligations to develop emissions reduction strategies, section 111 of the Act requires the EPA to adopt standards of performance that focus on sources that cause or contribute significantly to ''air pollution which may reasonably be anticipated to endanger public health and welfare.'' Such standards, referred to as NSPS, are emissions standards that are intended to reflect the degree of air pollution emission limitation attainable through the application of the best system of emission reduction (taking into account the cost of achieving such reduction and any non-air quality health and energy requirements) that the Administrator determines has been adequately demonstrated. Accordingly, the EPA historically has developed NSPS (and corresponding compliance test methods) under 40 CFR part 60 to provide standards of performance that address, among other pollutants, the control of PM.

When the EPA promulgated the first set of NSPS for PM in 1971, only the filterable PM fraction was regulated. The EPA simultaneously promulgated a test method, known as Method 5, as the NSPS compliance test method to measure the filterable fraction of PM. Once available, Method 5 was often also used for permitting purposes to quantify the in-stack emissions of PM that represented the particles in the atmosphere expressed in terms of the ambient indicator, TSP—the original indicator for the PM NAAQS. Thus, the filterable PM collected by Method 5 or other similar source test methods was sometimes referred to as ''TSP emissions,'' even though it was recognized that Method 5 actually collected particles that exceeded the TSP size range (25–45 μm), and did not include the condensable PM fraction. Today, Method 5 continues to serve as the performance testing procedure for most NSPS for PM.

As a result of the promulgation of the PM_{10} NAAQS in 1987, the annual source emissions reporting of ''particulate matter emissions'' (required under 40 CFR 51.322 and 51.323) ended with the state reporting of calendar year 1987 emissions, and the required reporting of PM_{10} emissions began with state reporting of calendar year 1988 emissions. In the absence of a standard reference test method for measuring PM_{10} emissions, states were instructed to choose an appropriate method of determining PM_{10} emissions for each source. On April 17, 1990, the EPA promulgated Method 201A to provide the states with a standard means of measuring filterable PM_{10} emissions contained in the stack. In the preamble of the promulgated Method 201A, the EPA noted that condensable PM forms very fine particles in the PM_{10} size range and is considered a portion of total PM_{10} emissions. The EPA announced its intent to propose Method 202 as a test method to measure the condensable portion. On October 12, 1990, the EPA proposed Method 202 to provide states with a means of measuring condensable PM from stationary sources. *See* 55 FR 41546. The test method for condensable PM, known as Method 202, was promulgated on December 17, 1991, in Appendix M of 40 CFR part 51. With the new focus on the PM_{10} indicator the EPA also began to emphasize the relevance of condensable PM,[1] and encouraged states to consider the condensable PM fraction as part of PM_{10} emissions where it was considered to be a significant contributor to an area's PM_{10} nonattainment status. However, there were only a few nonattainment areas where control of the condensable PM portion was actually required in order to achieve attainment of the NAAQS.

Even before the EPA introduced the $PM_{2.5}$ indicator for the PM NAAQS in 1997, the agency published information on $PM_{2.5}$ emissions in its National Emission Inventory Database (NEI).[2] With the assistance of information gained through speciation analyses of $PM_{2.5}$, the EPA recognized that condensable PM could be a substantial portion of the total $PM_{2.5}$ emitted by certain source categories. Beginning with the 1999 NEI, the EPA began including the condensable PM fraction of the total $PM_{2.5}$ emitted by certain source categories, and encouraged states to consider the condensable PM fraction for the development of emissions inventories for $PM_{2.5}$ SIPs.[3] The EPA also provided condensable PM emission factors for various source categories in AP–42 so that those state and local air control agencies having the responsibility to report emission inventories would have the tools needed

[1] ''Condensable PM is of potential importance because it usually is quite fine and thus falls primarily within the PM_{10} fraction.'' *See* ''PM–10 SIP Development Guideline,'' EPA–450/2–86–001 (June 1987) at p. 5–32.

[2] The EPA's NEI contains information about sources that emit criteria pollutants and their precursors, and hazardous pollutants. The database includes estimates of annual air pollutant emissions from point, nonpoint and mobile sources. The NEI currently contains information on PM with regard to the criteria indicators PM_{10} and $PM_{2.5}$.

[3] ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze,'' EPA–454/R–99–006 (April 1999).

to estimate and report those emissions to the EPA.

In 2002, the EPA issued a rule known as the Consolidated Emissions Reporting Rule (CERR), which, among other things, established requirements for the reporting to the EPA of $PM_{2.5}$ emissions. In conjunction with the new reporting requirements, the EPA added definitions of ''primary PM,'' ''primary PM_{10},'' and ''primary $PM_{2.5}$,'' all of which included both the filterable and condensable PM fraction. *See* 67 FR 39602 (June 10, 2002). The CERR required states to report emissions of primary PM_{10} and primary $PM_{2.5,}$ and listed as optional the reporting of emissions of primary PM. However, when the EPA amended those rules in 2008, it dropped the definition of ''primary PM'' and the listing of ''primary PM'' as an optional pollutant, eliminating the requirement for reporting ''PM'' (as opposed to PM_{10} and $PM_{2.5}$). *See* 73 FR 76539 (December 17, 2008).

In November 2005, the EPA proposed requirements that states must fulfill in developing their implementation plans for the attainment of $PM_{2.5}$ NAAQS. *See* 70 FR 65984 (November 1, 2005). With the historical emphasis on controlling the filterable PM fraction, it became apparent that in many cases it would be necessary to take a closer look at the control of the condensable PM fraction in order to attain the $PM_{2.5}$ NAAQS in some areas.[4] The preamble to the 2005 proposed rule highlighted the importance in certain cases of controlling the condensable PM fraction to help ensure the attainment of the new NAAQS. It was acknowledged at that time that most stationary source test methods specified in state rules did not provide for the measurement of condensable PM. As such, it was found that most source test methods referenced in SIPs provided a measurement of only the filterable fraction of PM. The EPA further noted that ''these filterable particulate matter test methods are either identical or very similar to one of the ten federal test methods published in Appendix A of 40 CFR Part 60 and used to determine compliance with New Source Performance Standards (NSPS).'' *Id.* at 66049. The EPA indicated that states needing to adopt local control measures for primary $PM_{2.5}$ in nonattainment areas would need to revise their stationary source test methods to focus on the $PM_{2.5}$ indicator, including the condensable PM fraction.[5]

On March 25, 2009, the EPA proposed to modify existing Method 201A to allow for measurement of filterable $PM_{2.5}$. In fact, the proposed modification offered the ability to measure filterable PM_{10}, filterable $PM_{2.5}$, or both filterable PM_{10} and filterable $PM_{2.5}$ from stationary sources. At the same time, the EPA proposed amendments to Method 202 to improve the precision of the method for measuring condensable PM and to provide for more accurate overall quantification of primary emissions of PM_{10} and $PM_{2.5}$ to the ambient air. Method 202 contained several optional procedures that were intended to accommodate the various test methods used by state and local regulatory entities at the time Method 202 was being developed. The inclusion of the optional procedures ultimately proved problematic in that each of them resulted in a different emissions value. To address this issue, the EPA explored the influence of the optional procedures to identify the ones that would result in biased or imprecise measurements. In December 2010, the EPA promulgated an improved Method 202 with limited options that would produce more consistent measures of emissions.

C. NSR Program for PM

The NSR program is a statutorily-based preconstruction permitting program that applies when a stationary source of air pollution proposes to construct or undergo modification. The NSR program consists of three different preconstruction permit programs: PSD, nonattainment NSR and minor NSR. We often refer to the PSD and nonattainment NSR programs together as the major NSR program because those permit programs regulate the construction of new major stationary sources and major modifications to existing major stationary sources.

The nonattainment NSR program applies in advance of construction to new major stationary sources and major modifications of sources of a pollutant that locate in an area that is designated ''nonattainment'' for that pollutant. As such, the nonattainment NSR program applies only with respect to pollutants for which the EPA has promulgated NAAQS (commonly described as ''criteria pollutants''). On the other hand, the PSD program is a statutorily-based preconstruction review and permitting program that applies to new or modified major stationary sources proposing to locate in an area meeting any NAAQS (''attainment'' areas) and areas for which there is insufficient information to classify them as either attainment or nonattainment (''unclassifiable'' areas) for at least one pollutant. Like the nonattainment NSR program, the applicability of the PSD program to a major stationary source or major modification must be determined in advance of construction and is on a pollutant-specific basis. However, unlike the nonattainment NSR program, the PSD requirements may apply to any ''air pollutant'' that is ''subject to regulation'' under the Act.[6] Thus, the PSD program is not restricted to criteria pollutants.[7] Once a major source is determined to be subject to the PSD program (PSD source) for a particular air pollutant, among other requirements, it must undertake a series of analyses to demonstrate that it will use the best available control technology (BACT) to minimize the emissions of each regulated pollutant and that the emissions of the source will not cause or contribute to a violation of any applicable NAAQS or any applicable maximum allowable increase in a pollutant concentration (PSD increment).

Consistent with the original NAAQS and PSD increments for PM, the PSD program established pollutant applicability requirements for PM on the basis of the TSP indicator. Accordingly, the PSD regulations defined a ''significant'' increase in emissions of PM as 25 tons per year (tpy). When the EPA revised the PM NAAQS in 1987, establishing a new PM_{10} indicator, two indicators for particles were recognized as being regulated under the Act because the statutory PSD increments for PM were still expressed in terms of TSP. The addition of the new PM_{10} indicator also necessitated a distinction between those emissions of PM that should be used to determine a source's compliance with

[4] ''The inclusion of condensable emissions in a source's $PM_{2.5}$ emissions is of increasing importance with the change in the indicator for particulate matter to $PM_{2.5}$. Condensible emissions are essentially fine particles, and thus are a larger fraction of $PM_{2.5}$ than of TSP or PM_{10}.'' 70 FR 65984 (November 1, 2005) at p. 66039.

[5] The EPA did indicate that ''test methodologies that measure only filterable particulate matter would be acceptable in areas where no additional reductions of primary $PM_{2.5}$ and particulate precursor emissions are required to project attainment of the $PM_{2.5}$ NAAQS.'' *Id.* at 66049.

[6] Although the language in the PSD requirements in the CAA states that those requirements apply to any pollutant subject to regulation under the Act, section 112(b)(6) of the CAA specifically excludes hazardous pollutants regulated under that section of the CAA from the PSD provisions. Accordingly, hazardous pollutants listed in section 112 of the CAA are not regulated under the EPA's PSD regulations. *See, e.g.,* 40 CFR 52.21(b)(50)(v).

[7] The EPA uses the term ''particulate matter emissions'' to define a pollutant regulated under the PSD program, but not under the nonattainment NSR program because nonattainment designations apply only with regard to criteria pollutants (pollutants for which NAAQS exist, *e.g.,* PM_{10} and $PM_{2.5}$). ''Particulate matter emissions'' are not considered a criteria pollutant.

the new PM_{10} NAAQS and those emissions of PM that should be used to determine a source's compliance with the existing TSP-based increments. Hence, in 1987, the EPA adopted the term ''particulate matter emissions'' to represent the indicator of emissions of PM that roughly corresponds to the ambient indicator, TSP, and adopted the term ''PM_{10} emissions'' to represent the indicator of emissions of PM that corresponds to the ambient indicator, PM_{10}. *See* 52 FR 24672 (July 1, 1987). Accordingly, the original significant emissions rate of 25 tpy was retained and applied to the newly-defined term ''particulate matter emissions'' (associated with the ambient TSP indicator), and simultaneously a significant emissions rate of 15 tpy was defined with regard to ''PM_{10} emissions.'' *See* 40 CFR 51.166(b)(23)(i) and 52.21(b)(23)(i).

In 1993, as authorized by the CAA Amendments of 1990, the EPA adopted increments for PM that were expressed in terms of ambient concentrations of PM_{10}, and substituted those increments for the original statutory increments for PM based on the TSP indicator. *See* 58 FR 31622 (June 3, 1993). As a result, both the NAAQS for PM and the PSD increments for PM were henceforth measured by the PM_{10} indicator and, once states revised their SIPs to incorporate the new PM_{10} NAAQS and PM_{10} increments, the TSP (ambient) indicator was no longer considered a regulated indicator of particles. However, because the NSPS for PM commonly measured performance standard compliance based on emissions of PM in a manner that was roughly associated with the original ambient TSP indicator, the EPA stated in the preamble to the 1993 final rule promulgating new PSD increments based on PM_{10} that the agency would continue to regulate ''particulate matter emissions'' (25 tpy significant emissions rate) separately from ''PM_{10} emissions'' (15 tpy significant emissions rate) for purposes of PSD applicability determinations. *Id.* at 31629.

In October 1997, following the promulgation of revised NAAQS for PM, which included the addition of NAAQS defined by the $PM_{2.5}$ indicator, the EPA issued a guidance memorandum titled ''Interim Implementation for the New Source Review Requirements for $PM_{2.5}$'' (John Seitz, EPA, October 27, 1997).[8] In this guidance, the EPA set forth what is referred to as the 1997 PM_{10} Surrogate Policy, in which it was explained that sources could continue to use implementation of a PM_{10} program as a surrogate for meeting the $PM_{2.5}$ NSR requirements until certain technical difficulties were resolved. Those technical difficulties included the lack of necessary tools to calculate $PM_{2.5}$ emissions and related precursors from individual stationary sources, the lack of adequate modeling techniques to project ambient $PM_{2.5}$ impacts, and the lack of $PM_{2.5}$ ambient monitoring sites. Accordingly, sources applying for PSD permits could rely on a demonstration of compliance with regard to the PM_{10} requirements as an interim measure to satisfy the CAA requirements for meeting BACT and ambient air quality standards for the new $PM_{2.5}$ indicator. In 2005, following the promulgation of nonattainment area designations for $PM_{2.5}$, the EPA issued guidance extending the 1997 PM_{10} Surrogate Policy to the issuance of major source permits in $PM_{2.5}$ nonattainment areas. (''Implementation of New Source Review Requirements in $PM_{2.5}$ Nonattainment Areas,'' April 5, 2005.)

In 2008, the EPA issued a final rule setting forth certain new requirements for $PM_{2.5}$ in its NSR and PSD regulations. *See* ''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). Specifically, the EPA identified the major source threshold and significant emissions rate for $PM_{2.5}$ to reflect the indicator for the PM NAAQS promulgated in 1997. *See* 40 CFR 51.166(b)(23)(i) and 52.21(b)(23)(i). The 2008 rule also announced the end of the use of the EPA's 1997 PM_{10} Surrogate Policy under the federal PSD program at 40 CFR 52.21 and the nonattainment NSR program (including the Emission Offset Rule at 40 CFR part 51 Appendix S) upon the effective date of the final rule (July 15, 2008). *See* 73 FR at 28340–28343. However, the rule provided a grandfathering provision, under the federal PSD program, for PSD permit applications that were determined to be complete before July 15, 2008, but had not yet received a PSD permit by that date, enabling those applications to continue to be reviewed under the 1997 PM_{10} Surrogate Policy in lieu of the new $PM_{2.5}$ requirements. Later, in a final rule issued on May 18, 2011, which became effective on July 18, 2011, the EPA announced the repeal of that PSD grandfather provision. *See* 76 FR 28646. The EPA continued to allow the use of the surrogate policy[9] for PSD permits issued under SIP-approved PSD programs until May 16, 2011—the due date for revising SIPs to incorporate the new $PM_{2.5}$ PSD requirements promulgated in the 2008 rule. *See* 76 FR at 28659 (declining to adopt a proposal to end the policy earlier).

Hence, PM is currently being regulated under the PSD program as three separate regulated pollutants. Those include PM_{10} and $PM_{2.5}$—both of which are indicators reflecting the way the NAAQS for PM are currently measured—and ''particulate matter emissions,'' which is a term used in the PSD regulations to signify the indicator of PM that is measured and regulated under various NSPS for PM (40 CFR part 60).[10] All three of the indicators for PM are considered separately as regulated NSR pollutants subject to review under the PSD program, which means that proposed new and modified sources must treat each indicator of PM as a separate regulated pollutant for applicability determinations, and must then apply the PSD requirements, as appropriate, independently for each indicator of PM.

The 2008 rule also added a provision to the definition of ''regulated NSR pollutant'' in the PSD regulations and the Emission Offset Interpretative Ruling that required the inclusion of the condensable PM fraction for all three emissions-based indicators of PM. Accordingly, the determination of the potential emissions (for permit applicability determinations), and the setting of emissions limitations and in-stack pollutant measurements (for source compliance purposes) would involve the inclusion of the condensable fraction of PM for each of the three PM indicators. However, the EPA also announced in the 2008 rule that it would not require states to implement the requirement to account for condensable PM in establishing enforceable emissions limits for either PM_{10} or $PM_{2.5}$ in permits until the completion of a transition period that would end on January 1, 2011. *See* 73 FR at 28335. The EPA explained that the transition period would allow the agency time to assess concerns raised about uncertainties associated with the measurement of direct $PM_{2.5,}$ including condensable PM, and to conduct a notice and comment rulemaking to codify new or revised test methods.

[8] Available in the docket, ID. No. EPA–HQ–OAR–2003–0063, and at *http://www.epa.gov.nsr/documents/nsrmemo.pdf.*

[9] During this period, EPA communicated that the policy should be applied consistent with applicable case law on use of surrogates. *See* 75 FR at 6831.

[10] In addition to the NSPS for PM, it is noted that states 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.

Thus, while the definition of ''regulated NSR pollutant'' required the inclusion of condensable PM in all three indicators for emissions of PM, the transition policy effectively delayed its implementation until January 1, 2011, unless an existing permit condition or SIP expressly required that the condensable PM fraction be included in the measurement of PM_{10} emissions or $PM_{2.5}$ emissions. Also, states were required to submit to the EPA by May 16, 2011, SIP revisions addressing the new, revised definition of ''regulated NSR pollutant'' and other new $PM_{2.5}$ NSR requirements promulgated in the 2008 rule.

IV. What is the final action that the EPA is taking on the definition of ''regulated NSR pollutant'' and how does it affect the way ''particulate matter emissions'' are measured?

This final rule corrects an inadvertent error that established a general requirement under the definition of ''regulated NSR pollutant'' to account for the condensable PM fraction in applicability determinations and in establishing emissions limitations with regard to ''particulate matter emissions.'' The change that has been made affects three sets of NSR regulations, including the PSD regulations at 40 CFR 51.166 and 52.21, and the Emission Offset Interpretative Ruling at 40 CFR part 51 Appendix S.

It is important to note that the change being finalized under this action does not mean that we are totally exempting the inclusion of the condensable PM fraction as part of ''particulate matter emissions.'' As we described in the proposal, it may be necessary for PSD sources to count the condensable PM fraction with regard to ''particulate matter emissions'' in certain cases. The first case is for a source that is subject to an NSPS for which the condensable PM fraction must be included in the determination of compliance with the standard of performance for PM.[11] The second case is where the applicable SIP already requires that the condensable PM fraction be included in the measurement of ''particulate matter emissions.'' Finally, the third case is where a source that emits ''particulate matter emissions'' is not subject to an NSPS, but is required by the reviewing authority to include the condensable PM fraction. *See* 77 FR 15661. Accordingly, the EPA proposed to add new regulatory language at 40 CFR 51.166(b)(49)(ii) and 52.21(b)(50)(ii) to address these particular situations. (However, as pointed out by a commenter, we omitted language referencing an approved SIP (case 2) in the proposed regulatory language.)

In this final rule, based on public comments and additional considerations we have since identified, we are not adopting the proposed clarifying text in 40 CFR 51.166(b)(49)(ii) and 52.21(b)(50)(ii). In the proposal, the EPA explained that the revisions to these subsections were intended to assure that the condensable PM fraction of ''particulate matter emissions'' was counted in those cases where either the applicable NSPS requires that the condensable PM fraction be included in the determination of compliance with the standard of performance for PM or the applicable SIP already requires the inclusion of the condensable PM fraction. The EPA does not believe that the proposed revisions to subparagraph (ii) are necessary to include the condensable fraction of ''particulate matter emissions'' where it would be consistent with the applicable NSPS. Federal regulations at 40 CFR 51.100(pp) already define ''particulate matter emissions'' to be measured according to ''the applicable reference methods, or an equivalent or alternative method, specified in this chapter, or by a test method specified in an approved State implementation plan.'' We believe that definition is appropriately applied under both part 51 and part 52 of our regulations, even though part 52 does not presently contain such any definition of the term ''particulate matter emissions,'' and thus is not directly applicable. Thus, the condensable fraction of particulate matter emissions should be counted where appropriate, consistent with the part 51 definition.

In addition, public comments discussed later in this preamble raised questions about the proposed regulatory language that provided the option, when an NSPS was not applicable to a source, for a reviewing authority to determine on a case-by-case basis whether to include condensables in ''particular matter emissions.'' Comments have persuaded the EPA that this case-by-case approach is not needed and that if a source is not covered by an NSPS, the condensable PM fraction need not be included in ''particulate matter emission'' unless the state elects to implement such a requirement through its SIP.

Furthermore, we have recognized that the regulatory text that we proposed (which is not specific to ''particulate matter emissions'') may have a broader effect on the definition and measurement of other regulated NSR pollutants that extends beyond the intentions outlined in the proposal. Accordingly, in order to allow for further evaluation of the possible implications of the proposed regulatory text, the EPA is not finalizing the proposed revisions to subparagraph (ii) at this point.

For these reasons, we are retaining the existing regulatory language in these subparts of the PSD regulations without change. However, we will continue to evaluate the need for the proposed changes to 40 CFR 51.166(b)(49)(ii) and 52.21(b)(50)(ii).

The proposed revisions to these paragraphs of the regulations were a secondary component of the proposed rule. The primary objective of our decision to revise the definition of ''regulated NSR pollutant'' is to correct an inadvertent error, and thus ensuring that we do not impose a new requirement on state/local agencies and the regulated community that has little if any effect on preventing significant air quality deterioration or on efforts to attain the primary and secondary PM NAAQS. That is, the PSD regulations will not require the inclusion of condensable PM in measurements of ''particulate matter emissions,'' except where either the applicable NSPS compliance test includes the condensable PM fraction or the applicable implementation plan requires the condensable PM fraction to be counted. Proposed new or modified stationary sources of PM typically will be subjected to the PSD requirements on the basis of their potential to emit significant amounts of PM_{10} or $PM_{2.5}$ and will be required to install controls for their emissions of PM_{10} and/or $PM_{2.5}$, both of which must consider the condensable PM fraction.

V. What comments did we receive on the proposed amendments to the definition of ''regulated NSR pollutant''?

The EPA provided a 60-day review and comment period on this rulemaking, which closed on May 15, 2012. A total of seven comment letters (six industry comment letters and one state agency comment letter) were received on the proposed amendment to correct the definition of ''regulated NSR pollutant'' by removing the unilateral requirement that condensable PM be

[11] In developing the NSPS for Wool Fiberglass Insulation Manufacturing facilities (Subpart PPP), the EPA determined that the control device could effectively reduce both the solid particles and the condensable PM, and promulgated the PM standard based on the measurement of both filterable solid particles and condensable PM. In addition, the agency established a variant of Method 5, referred to as Method 5e, to measure the filterable PM and the total organic carbon portion of the impinger catch. *See* 50 FR 7694 (February 25, 1985).

included in measurements of ''particulate matter emissions.'' All of the commenters supported the EPA's proposed correction. Although the commenters supported the EPA's proposal with regard to the way that ''particulate matter emissions'' should be measured, some commenters also requested that the EPA make additional revisions or clarify certain aspects of the proposal in the final rule preamble and regulation language. The following subsections provide a summary of those requests.

A. Regulated Indicators of PM

Comment: A state agency commenter claims that the EPA's discussion of PM and the various indicators of PM is confusing in several ways. First, the state agency commenter notes that the EPA uses the general term ''particulate matter'' in the Integrated Science Assessment or ISA (previously called the Air Quality Criteria Document) to describe the criteria pollutant, while also using various indicators—TSP, PM_{10} and $PM_{2.5}$—based on particle size to establish NAAQS. The state then explained that ''[w]e have always understood that each of the indicators used for PM included all applicable size distributions. Therefore, PM_{TSP} includes PM_{10} and $PM_{2.5}$ and PM_{10} includes $PM_{2.5}$. Therefore, we found the preamble justification confusing when EPA refers to PM without reference to particle size.''

Response: Any reference to ''PM'' alone was intended to generally describe the generic pollutant without regard to the specific indicator being regulated by either the NAAQS or an emissions test method. The term ''particulate matter'' or ''PM'' is used generically to describe a broad range of particles. PM is a pollutant that is defined more specifically for regulatory purposes by the method in which it is collected, either under in-stack or ambient conditions. As explained earlier in this preamble, for NSR purposes, the EPA regulates three indicators of emissions of PM—''particulate matter emissions,'' ''PM_{10} emissions'' and ''$PM_{2.5}$ emissions,'' and two indicators of ambient PM—PM_{10} and $PM_{2.5}$. The term ''total suspended particulate'' or ''TSP'' was originally used by the EPA as an indicator of ambient concentrations of PM by which compliance with the original NAAQS for PM was measured. The term ''particulate matter emissions'' represents the indicator of emissions of PM that roughly corresponds with the ambient indicator ''TSP.'' Since the EPA revoked the TSP-based NAAQS, but continues to regulate ''particulate matter emissions'' as an emissions indicator associated with various NSPS for PM, ''particulate matter emissions'' is referred to as a non-criteria emissions indicator of PM. Accordingly, when we intend to refer to a specific regulated form of PM, the preamble uses the appropriate term—''particulate matter emissions,'' ''PM_{10} emissions,'' or ''$PM_{2.5}$ emissions''—to establish the form of PM to be regulated for NSR applicability determinations and emissions setting purposes.

Comment: The same state agency commenter claims that ''EPA proposes to regulate only the filterable portion of PM under Method 5 and retain PM_{10} and $PM_{2.5}$ as indicators for the PM criteria pollutant.'' The state then indicated that ''[t]he definition of direct emissions for PM_{10} and $PM_{2.5}$ includes both filterable and condensable PM emissions.'' Thus, the state agency commenter claims that it was unclear how the EPA's final rule would affect permit applicability determinations, ''since the state implementation plan (SIP) includes condensable emissions for total PM.'' In conjunction with this uncertainty, the state commenter asks whether it is the EPA's intent ''to limit the emissions for PM to only the fraction larger than PM_{10} or $PM_{2.5}$? Or, is EPA's intent to limit the emissions for PM to only the filterable fraction larger than PM_{10} or $PM_{2.5}$, but include the filterable and condensable emissions for PM_{10} and $PM_{2.5}$?'' The state agency commenter requests that the EPA confirm its understanding that ''no source impact analysis under PSD is required for PM because EPA considers PM—as PM_{TSP}—to be a non-criteria pollutant indicator similar to sulfuric acid mist.'' Thus, the state agency commenter understood that it would evaluate impacts under the state's minor NSR program, and only require a control technology review under PSD for the filterable fraction of particulate matter emissions.

Response: The final rule sets forth minimum PSD program requirements at 40 CFR 51.166 for an approvable SIP. Under those requirements, the measurement of ''particulate matter emissions'' generally includes only the filterable portion, unless the applicable NSPS or SIP requires that the condensable PM fraction be counted as well. Hence, as in the case of the state commenter, where a SIP requires the inclusion of condensable PM emissions in the measurement of ''total PM'' (the term that the state commenter appears to use in lieu of the EPA's term ''particulate matter emissions''), the final rule does not preclude the state from requiring a source to determine its applicability, and enforceable emissions limits, for ''particulate matter emissions'' based on both the filterable and the condensable PM fractions. In any case, it was not the EPA's intent to limit the measurement of ''particulate matter emissions'' to the fraction (or filterable fraction) larger than PM_{10} and $PM_{2.5}$. Clearly, Method 5 measures particles that include the filterable PM_{10} and $PM_{2.5}$, but includes larger particles as well.

To address ''particulate matter emissions,'' we generally agree with the commenter's understanding that one of the primary concerns under the PSD program is to ensure that a new major stationary source that emits significant amounts of ''particulate matter emissions'' or a major modification that results in a significant net emissions increase of ''particulate matter emissions'' must undergo a control technology review for that emissions indicator of PM. However, there is a source impact assessment component in the PSD requirements that cannot simply be relegated to a minor NSR review requirement with regard to ''particulate matter emissions.'' While there are no air quality standards (NAAQS or increments) associated with ''particulate matter emissions,'' section 165(e)(3)(B) of the CAA requires an analysis of the ambient air quality, climate, meteorology, terrain, soils and vegetation, and visibility ''for each pollutant regulated under this Act'' that will be emitted by the proposed PSD project. This requirement, referred to as the ''Additional Impact Analysis'' at 40 CFR 51.166(o) and 40 CFR 52.21(o), could potentially require certain analyses with regard to ''particulate matter emissions'' as part of the PSD preconstruction review process.

Comment: The state agency commenter and an industry commenter both had recommendations for excluding ''particulate matter emissions'' from the major source applicability requirements. The state agency commenter's recommendation addresses major modifications, while the industry commenter recommends an exclusion from major source applicability altogether. The state agency commenter recommends that, because the concern with ''particulate matter emissions'' rests with NSPS applicability and control technology review, the EPA should ''remove the major modification significant emission rate (25 tpy) for PM from the PSD major modification portion of the PSD rules, and rely on the state's minor NSR program to conduct the technology review under the NSPS program. * * *'' The industry commenter

believes that there is no reason to include ''particulate matter emissions'' in any major NSR applicability determinations, regardless of whether the term includes condensable PM or not, because (1) particles larger than 10 μm are not a significant driver of health effects; and (2) applicability thresholds for PM_{10} and $PM_{2.5}$ are already in place and are generally more protective standards than the ''particulate matter emissions'' standards. Thus, the industry commenter recommends that the definition of ''regulated NSR pollutant'' be further modified to eliminate ''particulate matter emissions'' as a third indicator of PM for NSR purposes.

Response: With regard to the comments that ''particulate matter emissions'' should be excluded from major source applicability determinations, we note that the statutory PSD requirements mandate preconstruction review for each pollutant regulated under the CAA. For example, section 165(a)(4) requires best available control technology for ''each pollutant subject to regulation under this Act. * * * '' Thus, the EPA's PSD regulations require that both criteria and non-criteria pollutants undergo PSD review under the applicable provisions. The term ''particulate matter emissions'' represents an indicator of emissions of PM, different from the current indicators of PM that define the PM NAAQS, that is regulated under various NSPS to determine compliance with regard to PM based on Test Method 5. For this reason, the EPA believes that it is necessary to consider ''particulate matter emissions'' to be a separate pollutant subject to regulation under the CAA and, thus, subject to PSD. *See, e.g.,* 58 FR 31622 at 31629 (June 3, 1993).

Comment: Two industry commenters request that the EPA clarify that, consistent with prior rulemaking, it intends to limit the interpretation of existing limits—and associated compliance demonstration requirements—to filterable PM. The commenters point to several instances when the EPA stated the importance of implementing any new or revised emissions limits and test methods that account for condensable emissions in a prospective manner and clearly differentiated from existing NSR permit requirements in order to avoid confusion over a source's compliance status relative to existing PM emissions limits that did not include the condensable portion. (Commenters cited similar EPA statements made in two separate **Federal Register** notices, *i.e.,* 72 FR 20586 (April 25, 2007) at 20654 and 73 FR 28321 (May 16, 2008) at 28335.)

Response: The EPA's position with regard to the enforcement of permits, as explained in the preamble to the 2008 rule, was and continues to be that the provisions requiring the inclusion of the condensable PM fraction should be implemented prospectively and not retroactively after the January 1, 2011, default end date for the condensable PM transition period. In the preamble to the 2008 rule, we indicated with regard to the potential for retroactive enforcement that the EPA ''will not revisit applicability determinations made in good faith prior to the end of the transition period, insofar as the quantity of condensable PM emissions are concerned, unless the applicable implementation plan clearly required consideration of condensable PM.'' *See* 73 FR at 28335. We also stated that ''EPA will interpret PM emissions limitations in existing permits or permits issued during the transition period as not requiring quantification of condensable $PM_{2.5}$ for compliance purposes unless such a requirement was clearly specified in the permit conditions or the applicable implementation plan.'' Id. 28335. Thus, we believe our position is clear that it is not our intention to apply the requirement to include the condensable PM fraction to applicability determinations and emissions limitations in permits that occurred prior to the January 1, 2011, end of the condensable PM transition period, unless such determinations and emissions limitations already address the condensable PM fraction. We do, however, intend to apply the requirement prospectively, such that when existing sources undergo modifications involving increases in PM_{10} emissions and $PM_{2.5}$ emissions, the source will be required to consider the condensable fraction of PM_{10} and $PM_{2.5}$ emissions in determining the applicability of PSD to the proposed project, and establishing enforceable emissions limits and compliance tests.

B. Defining PM Consistent With an Applicable New Source Performance Standard (NSPS)

Comment: Several industry commenters support the EPA's proposal to define PM consistent with an applicable NSPS. One of the commenters recommends that the final regulation be amended to clarify that the definition and measurement of PM_{10} and $PM_{2.5}$, when used in the context of NSR and PSD reviews and analyses, also be tied to the underlying and governing NSPS requirements of the source being considered. Specifically, the commenter states that the final regulation should be amended to state that $PM_{2.5}$ and PM_{10} should not include the condensable fraction of PM for any source where the applicable NSPS does not include the condensable fraction of PM in the definition or measurement of the PM standard.

Response: The main purpose of this rule is to remove the general requirement that ''particulate matter emissions'' include the condensable PM fraction and to make the measurement of ''particulate matter emissions'' generally consistent with the method prescribed by the applicable NSPS (except where a SIP would be more stringent). We do not agree with the recommendation by the commenters that the final PSD regulations should not require ''$PM_{2.5}$ emissions'' and ''PM_{10} emissions'' to include the condensable PM fraction when the applicable NSPS does not include the condensable fraction. There may be more than one basis upon which a pollutant is regulated under the Clean Air Act, and hence defined as a regulated NSR pollutant. Both $PM_{2.5}$ and PM_{10} are indicators of PM for which the EPA has promulgated health- and welfare-based NAAQS and thus each is a regulated NSR pollutant independent of the scope of any applicable NSPS for a source. Furthermore, it is important that a source seeking a PSD permit demonstrate that its proposed emissions increases will not cause or contribute to a violation of any NAAQS or increment, as is clearly required by the CAA and PSD regulations. As such, it is important to consider the condensable PM fraction in each case when setting enforceable emissions limits and compliance tests for PSD sources. The fact that a particular NSPS may not include the condensable fraction to determine compliance with a particular performance-based standard does not alter that fact. The standards of performance for new sources established under section 111 of the CAA reflect emission limits achievable at the time of promulgation with the best adequately demonstrated technological system of continuous emission reduction considering the cost of achieving such emission reductions and any non-air quality health, environmental and energy impacts. Thus, if the consideration of the condensable fraction of PM_{10} and $PM_{2.5}$ emissions would not be indicative of the efficiency of a control device used by the industry at the time of promulgation, then it would not be necessary or appropriate to include

measurement of the condensable PM fraction as part of the NSPS.[12]

On the other hand, SIPs, including the NSR permitting requirements, approved under section 110 of the Act, must provide for the attainment and maintenance of NAAQS designed to protect public health and welfare. If the enforceable limits in a PSD permit for PM_{10} and $PM_{2.5}$ do not include the condensable PM fraction, simply because the applicable NSPS does not include it, the source's demonstration of compliance with the NAAQS and increments for PM_{10} and $PM_{2.5}$ would be incomplete and subject to challenge. Similarly, for nonattainment NSR, it is important to consider the condensable PM fraction so that all PM_{10} and $PM_{2.5}$ emissions increases can be considered for applicability determinations and for determining required offsets.

Thus, the final rule retains the general requirement to include the condensable fraction of PM_{10} and $PM_{2.5}$ emissions in each case for purposes of NSR permitting under the EPA's regulations at 40 CFR 51.166(b)(49)(i), 40 CFR 52.21(b)(50)(i), 40 CFR 51.165(a)(1)(xxxvii), and 40 CFR part 51 Appendix S. Because of these provisions, the definition of ''PM_{10} emissions'' in section 51.100(rr) of the EPA's regulations should not be construed to limit PM_{10} emissions to only the fraction covered by an applicable test method in an NSPS or SIP. Section 51.100(rr) defines ''PM_{10} emissions'' as measured under the chapter of the Code of Federal Regulations where this provision is located or an approved SIP. The more specific definitions of the term ''regulated NSR pollutant'' referenced above are part of the same chapter and thus applicable under the general definition of ''PM_{10} emissions'' in section 51.100(rr). Therefore, the specific definitions in the NSR regulations control in this instance to require inclusion of the condensable fraction of PM_{10} emissions in all cases under the NSR program.

C. Defining PM To Include Condensable PM in the State Implementation Plan (SIP)

In the preamble to the notice of proposed rulemaking (NPRM), we indicated that when a proposed source or modification emits a pollutant that is regulated under section 111 of the CAA, but the source itself is not subject to an NSPS for that pollutant, the reviewing authority will determine the applicable test method to be used to determine the source's compliance, *e.g.,* with regard to the possible inclusion of condensable PM in the measurement of ''particulate matter emissions.'' *See* 77 FR at 15661 and 15663 (proposed regulatory text at 40 CFR 51.166(b)(49)(ii) providing that ''[f]or sources not currently regulated by an applicable NSPS, measurement of such pollutant shall be determined by the reviewing authority'').

Comment: Two industry commenters opine that reviewing authorities should not be allowed to define PM as requiring consideration of condensable PM where the SIP does not already require it of a particular source category. One of the industry commenters suggest that the EPA replace the reference to the ''reviewing authority'' in proposed 40 CFR 51.166(b)(49)(ii) and 52.21(b)(50)(ii) with a reference to the ''applicable state implementation plan.'' The commenter states that the proposed language suggests that, for a non-NSPS source, a permitting authority could specify a measurement method that is inconsistent with the SIP.

Response: The EPA believes that states should follow the requirements set forth in their EPA-approved SIP and that it would be inappropriate to make decisions on individual permits that are inconsistent with the applicable SIP provisions. Thus, where a SIP provides that only the filterable fraction of ''particulate matter emissions'' be counted, individual sources should not be selectively required to count the condensable PM fraction as well. We do not believe, however, that explicit language needs to be included in the regulatory text as recommended by the commenters. As explained earlier in this preamble, we have decided to take no final action at this time with regard to revising subparagraph (ii) of the definition ''regulated NSR pollutant.'' Accordingly, this final action does not revise the PSD regulations to include the proposed language or any clarification of it. As explained earlier, the definition of ''particulate matter emissions'' at 40 CFR 51.100(pp) provides that states can rely on a test method contained in ''an approved State implementation plan'' to determine the measurement of that pollutant. In the absence of specific language in the definition of ''regulated NSR pollutant,'' this definition provides sufficient criteria for the reviewing authority to determine the applicable method under federal law for measuring ''particulate matter emissions,'' and should address the commenters' concerns about the reviewing authority using a method inconsistent with the SIP in circumstances where the reviewing authority is implementing the approved SIP.

Comment: One state agency commenter provides that the actual proposed rule language (40 CFR 51.166(b)(49)(ii) and 52.21(b)(50)(ii)) only accounts for two of three stated cases cited by the EPA where condensable PM could be included in the measurement of ''particulate matter emissions,'' and omits the EPA-cited case where the applicable SIP already requires that the condensable PM fraction be included in the measurement of ''particulate matter emissions.'' The commenter suggests that the EPA reconsider and specifically list the SIP requirement case (where condensable PM should still be counted) in the final rule language to avoid confusion in regulatory intent.

Response: The commenter is correct in identifying the omission of the cited regulatory language in the proposal. For reasons discussed above, we are not adopting the proposed revisions to sections 51.166(b)(49)(ii) and 52.21(b)(50)(ii) at this time. In light of the definition of ''particulate matter emission'' in section 51.100(pp), we do not believe that a direct reference to the SIP needs to be included in sections 51.166(b)(49)(ii) and 52.21(b)(50)(ii). Accordingly, it should be clear that a state may choose to adopt a requirement for a test method that includes the condensable PM fraction as part of ''particulate matter emissions,'' for PSD applicability and permit enforcement purposes. It should also be noted that such requirement in a state's SIP will not similarly affect PSD sources in other states or SIP jurisdictions.[13]

D. Comments Related to Special EPA Policies for Implementing PM Requirements Under the NSR Program

Comment: Two industry commenters express concerns that the discussion in the March 16, 2012, proposal preamble regarding the history of the EPA's regulation of PM under the NSR program, failed to include a description of several key policy decisions, including the 1997 PM_{10} Surrogate

[12] Several preambles for NSPS have recognized that the measurement methods for the standards highlight the basis for the test methods selected and that the selected test methods will not necessarily measure emissions as they would exist upon release to the atmosphere. *See, e.g.,* 40 FR 46250 (Oct. 6, 1975); 43 FR 7568 (Feb. 23, 1978); 44 FR 34840 (June 15, 1979); 45 FR 66742 (Oct. 7, 1980).

[13] *See* Memo from Stephen L. Johnson, Administrator, to Regional Administrators re: EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program, at 15 (Dec. 18, 2008) (outlining interpretation of CAA section 116); 74 FR 51535, 51542–43 (Oct. 7, 2009) (proposing to retain Johnson Memo interpretation on reconsideration); 75 FR 17004, 17011–12 (April 2, 2010) (final action on reconsideration of interpretation).

Policy, the Grandfather Policy for $PM_{2.5}$ (for pending permits under the federal PSD program) and the condensable PM Transition Policy. These commenters indicate that there are continued concerns regarding the EPA's PM regulations that have created uncertainty and hardship for the regulated community, and specifically requests that the EPA include a discussion of these policies in the final rule preamble for accuracy purposes.

Response: This preamble includes a limited discussion about each of these special policies for implementing the PM program in section III.C of this preamble (*New Source Review Program for PM*). In addition, we have included references to earlier actions that provide greater details of the respective policies. Thus, we do not believe that it is necessary to provide more lengthy descriptions of the individual policies herein.

E. Other Comments Unrelated to the Final Rule

Several commenters raise concerns of either a policy or technical nature unrelated to the actions associated with this final rule. For example, two industry commenters state that EPA Method 201A cannot be used to accurately measure filterable PM_{10} and $PM_{2.5}$ from emissions units that use wet controls. Another commenter recommends that the EPA continue work toward development of a methodology known as the air dilution test methodology. A commenter recommends that the EPA accelerate its progress toward promulgating complete and appropriate modeling and monitoring methods necessary to provide the required technical support for effective and equitable implementation of $PM_{2.5}$ major NSR permitting. Finally, one commenter requests that the EPA review guidance documents to the states to assure that the EPA is giving them correct and clear direction regarding the need to test certified stationary engines. The details of these comments can be reviewed in the docket where all of the individual sets of comments received for this rulemaking have been posted. The EPA believes that these comments generally pertain to broader $PM_{2.5}$ issues but are not relevant to this limited action to revise the definition of ''regulated NSR pollutant'' as it applies to condensable PM emissions. As such, the issues described above are more appropriately addressed in forums other than this final rule.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This final action removes an unintended requirement to include condensable PM when quantifying ''particulate matter emissions'' from proposed new major stationary sources and major modifications subject to the PSD program. The change will eliminate an unintended burden.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, ''small entity'' is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, which removes an unintended requirement to include condensable PM when quantifying ''particulate matter emissions'' from proposed new major stationary sources and major modifications, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities because small entities are not subject to the requirements of this rule.

D. Unfunded Mandates Reform Act

This final action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector. The action does not impose any enforceable duty on any state, local or tribal governments or the private sector. This action removes an unintended requirement to include condensable PM when quantifying ''particulate matter emissions'' from proposed new major stationary sources and major modifications. Thus, this action is not subject to the requirements of sections 202 or 205 of UMRA.

This final action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As noted above, this final action removes an unintended requirement to include condensable PM when quantifying ''particulate matter emissions'' from proposed new major stationary sources and major modifications.

E. Executive Order 13132: Federalism

This final action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final action removes the unintended requirement to include condensable PM when quantifying ''particulate matter emissions'' from proposed new major stationary sources and major modifications. The requirement being removed was inadvertently included in the 2008 rule for implementation of the $PM_{2.5}$ NSR program. Thus, Executive Order 13132 does not apply to this rule. Nevertheless, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comment on the proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final action removes the

unintended requirement to include condensable PM when quantifying ''particulate matter emissions'' from proposed new major stationary sources and major modification. The removed requirement was inadvertently included in the 2008 rule for implementation of the $PM_{2.5}$ NSR program.

The Act provides for states to develop plans to regulate emissions of air pollutants within their jurisdictions. The Tribal Air Rule (TAR) under the Act gives tribes the opportunity to develop and implement Act programs to attain and maintain the $PM_{2.5}$ NAAQS, but leaves to the discretion of the tribes the decision of whether to develop these programs and which programs, or appropriate elements of a program, they will adopt. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This final action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the agency does not believe the environmental health or safety risks addressed by this action to eliminate an unintended requirement present a disproportionate risk to children. The removal of this requirement will not affect one of the basic requirements of the PSD program; that new and modified major sources must demonstrate that any new emissions do not cause or contribute to air quality in violation of the NAAQS.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule action to remove an inadvertent error that was introduced in a 2008 rulemaking will not have adverse human health or environmental effects on minority or low-income populations because it does not appreciably affect the level of protection provided to human health or the environment.

K. Congressional Review Act

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. The EPA will submit a report containing this rule 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). This rule will be effective on December 24, 2012.

L. Judicial Review

Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by December 24, 2012. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment (including any public hearing) can be raised during judicial review. This section also provides a mechanism for the EPA to convene a proceeding for reconsideration ''[i]f the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule[.]'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20004, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20004. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

VII. Statutory Authority

The statutory authority for this final action is provided by sections 101, 160, 163, 165, 166, 301 and 307(d) of the Act as amended (42 U.S.C. 7401, 7470, 7473, 7475, 7476, 7601 and 7607(d)).

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations.

40 CFR Part 52

Environmental protection, Administrative practices and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations.

Dated: October 12, 2012.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart I—[Amended]

■ 2. Section 51.166 is amended by revising paragraph (b)(49)(i) and by removing paragraph (b)(49)(vi). The revised text reads as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(49) * * *

(i) Any pollutant for which a national ambient air quality standard has been promulgated. This includes, but is not limited to, the following:

(*a*) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included;

(*b*) Any pollutant identified under this paragraph (b)(49)(i)(*b*) as a constituent or precursor to a pollutant for which a national ambient air quality standard has been promulgated. Precursors identified by the Administrator for purposes of NSR are the following:

(*1*) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(*2*) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

(*3*) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(*4*) Volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

* * * * *

■ 3. Appendix S to Part 51 is amended by revising paragraph II.A.31(ii) and by removing paragraphs II.A.31(iii) and (iv). The revised text reads as follows:

Appendix S to Part 51—Emission Offset Interpretative Ruling

* * * * *

II. * * *

A. * * *

31. * * *

(ii) Any pollutant for which a national ambient air quality standard has been promulgated. This includes, but is not limited to, the following:

(*a*) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in permits issued under this ruling. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

(*b*) Any pollutant that is identified under this paragraph II.A.31(ii)(*2*) as a constituent or precursor of a general pollutant listed under paragraph II.A.31(i) or (ii) of this Ruling, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(*1*) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(*2*) Sulfur dioxide is a precursor to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas.

* * * * *

PART 52—[Amended]

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

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

Subpart A—[Amended]

■ 5. Section 52.21 is amended by revising paragraph (b)(50)(i) and by removing paragraph (b)(50)(vi). The revised text reads as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(50) * * *

(i) Any pollutant for which a national ambient air quality standard has been promulgated. This includes, but is not limited to, the following:

(*a*) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

(*b*) Any pollutant identified under this paragraph (b)(50)(i)(*b*) as a constituent or precursor for a pollutant for which a national ambient air quality standard has been promulgated. Precursors identified by the Administrator for purposes of NSR are the following:

(*1*) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(*2*) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

(*3*) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(*4*) Volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA

demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

* * * * *

[FR Doc. 2012–25978 Filed 10–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0332; FRL—9743–6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Antibacksliding of Major NSR SIP Requirements for the One-Hour Ozone National Ambient Air Quality Standards (NAAQS); Major Nonattainment NSR (NNSR) SIP Requirements for the 1997 Eight-Hour Ozone NAAQS; and Major NSR Reform Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the SIP for the State of Texas that relate to antibacksliding of Major NSR SIP Requirements for the one-hour ozone NAAQS; Major NNSR SIP requirements for the 1997 eight-hour ozone NAAQS; Major NSR Reform Program with Plantwide Applicable Limit (PAL) provisions; and non-PAL aspects of the Major NSR SIP requirements, because these changes comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations and are consistent with EPA policies. Texas submitted revisions to these programs in two separate SIP submittals on March 11, 2011. On August 29, 2012, Texas submitted SIP revisions (adopted July 25, 2012) that it had previously proposed February 22, 2012, for parallel processing. On May 3, 2012, Texas provided a letter to EPA which included a demonstration showing how its submitted rules are at least as stringent as the Federal NSR Reform Program. EPA proposed approval of these revisions on June 20, 2012. Today, EPA is approving the two SIP revisions submitted March 11, 2011; the revisions submitted August 29, 2012; and the May 3, 2012, letter as part of the Texas NSR SIP. EPA is approving these provisions under section 110 and parts C and D of the Act.

DATES: This rule is effective on November 26, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2011–0332. All documents in this docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publically available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publically available only in hard copy form. Publically available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals, which are part of the EPA docket, are also available for public inspection at the State Air Agency during official business hours by appointment: Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733; telephone (214) 665–7212; fax number (214) 665–6762; email address *spruiell.stanley@epa.gov*.

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

Table of Contents

I. Background

A. What is the background of the Texas programs for major NSR for the eight-hour NAAQS for ozone and for NSR reform?

1. Major NSR for the Eight-Hour NAAQS for Ozone

On April 30, 2004, EPA promulgated regulations (69 FR 23858) that included requirements for implementing Major NSR for the 1997 eight-hour ozone NAAQS. On May 25, 2005, the TCEQ adopted SIP revisions to implement these requirements and submitted them to EPA on June 10, 2005. The EPA disapproved these regulations on September 15, 2010 (75 FR 56424) because the State's regulations did not meet the requirements of the Act, Federal regulations, and were not consistent with EPA policy. On March 11, 2011, TCEQ resubmitted the revisions adopted May 25, 2005, and submitted further revisions, adopted February 9, 2011, to address EPA's September 15, 2010, disapproval. Sections I.B and I.D of this preamble include further details on TCEQ's submission.

2. NSR Reform

On December 31, 2002 (67 FR 80186), EPA promulgated its NSR Reform Program. On November 7, 2003 (68 FR 63021), EPA promulgated a final action on its reconsideration of the December 31, 2002, NSR Reform Program's rules. On January 11, 2006, TCEQ adopted its regulations for NSR Reform and on February 1, 2006, submitted these regulations to EPA for SIP approval. EPA disapproved these regulations on September 15, 2010 (75 FR 56424) because the State's regulations did not meet the requirements of the Act, Federal regulations, and were not consistent with EPA policy. On March 11, 2011, TCEQ resubmitted the revisions adopted January 11, 2006, and submitted further revisions, adopted February 9, 2011, to address the grounds for EPA's September 15, 2010, disapproval. On February 22, 2012, TCEQ proposed additional revisions to these regulations and requested that EPA parallel process these revisions with the revisions submitted March 11, 2011, based upon the revisions that TCEQ proposed February 22, 2012. The TCEQ adopted these proposed revisions on July 25, 2012, and submitted them to EPA on August, 29, 2012. Finally, TCEQ submitted a letter dated May 3, 2012, to