The advisory committee will hold its fifth meeting on March 26 and 27, 2013. The agenda includes the following:

- Review of previous committee work;
- Review and discussion of subcommittee work and recommendations;
- Continued discussion on recommendations for transfer surface height and Transfer support location and configuration;
- Consideration of issues proposed by committee members; and
- Discussion of administrative issues.

The preliminary meeting agenda, along with information about the committee, is available at the Access Board’s website (http://www.access-board.gov/about/policies/comfort-of-other-participants-for-more-information). Committee meetings are open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have opportunities to address the committee on issues of interest to them during public comment periods scheduled on each day of the meeting.

The meetings will be accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be provided. Persons attending the meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see http://www.access-board.gov/medical-equipment.htm for more information). Also, persons wishing to provide handouts or other written information to the committee are requested to provide electronic formats to Rex Pace via email prior to the meetings so that alternate electronic formats to Rex Pace via email handouts or other written information to committee members.

David M. Capozzi, Executive Director.

[FR Doc. 2013–05936 Filed 3–14–13; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FR Doc. 2013–05936 Filed 3–14–13; 8:45 am]

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BILLING CODE 8150–01–P
NAAQS. This action is being taken under the CAA.

DATES: Written comments must be received on or before April 15, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0113 by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. Email: cox.kathleen@epa.gov.


Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2013–0113. EPA’s policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

For further information contact:

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I. Background

A. Federal Definition of “Regulated NSR Pollutant”

On May 16, 2008, EPA promulgated a rule to implement the 1997 PM2.5 NAAQS, including changes to the NSR program (the NSR PM2.5 Rule). See 73 FR 28321. The 2008 NSR PM2.5 Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the PM2.5 NAAQS in both attainment and nonattainment areas. Among other things, the 2008 NSR PM2.5 Rule required states to account for condensables in emissions of particulate matter (PM), PM less than or equal to ten micrometers in diameter (PM10), and PM2.5 no later than January 1, 2011. In an October 25, 2012 final rule (77 FR 65107), EPA clarified that condensable PM should be included as part of the emissions measurements only for regulation of PM2.5 and PM10. The final rule removed the inadvertent requirement in the 2008 NSR PM2.5 Rule that measurements of condensable PM be included as part of the measurement and regulation of PM.

B. U.S. Court of Appeals’ Decision in Natural Resources Defense Council v. EPA

On January 4, 2013, the U.S. Court of Appeals, in Natural Resources Defense Council v. EPA, No. 08–1250, 2013 WL 45653 (D.C. Cir., filed July 15, 2008) (consolidated with 09–1102, 11–1430), issued a judgment that remanded EPA’s 2007 and 2008 rules implementing the 1997 PM2.5 NAAQS. The Court ordered the EPA to “repromulgate these rules pursuant to Subpart 4 consistent with this opinion.” Id. at *8. Subpart 4 of Part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 implementation rule addressed by the court decision, “Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM2.5),” 73 FR 28321 (May 16, 2008), promulgated NSR requirements for implementation of PM2.5 in both nonattainment areas (nonattainment NSR) and attainment/ unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for PM2.5 attainment and unclassifiable areas to be affected by the Court’s opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 rule in order to comply with the Court’s decision. Accordingly, EPA’s narrow disapproval of West Virginia’s infrastructure SIP as to elements (C), (D)(iii)(I), or (J) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the Court’s opinion.

The Court’s decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA’s current action on the related infrastructure submittals. EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

C. West Virginia’s August 2011 SIP Submission

On August 31, 2011, the State of West Virginia through the West Virginia Department of Environmental Protection (WVDENP) submitted a formal revision to its SIP (the August 2011 SIP submission). The August 2011 SIP submission consisted of amendments to the PSD permitting regulations under West Virginia State Rule 45CSR14. On July 31, 2012 (77 FR 45302), EPA proposed full approval of West Virginia’s August 2011 SIP submission, as well as the amendments of other related infrastructure submissions required by the CAA which are
necessary to implement, maintain, and enforce the 1997 PM2.5 and ozone NAAQS, the 2006 PM2.5 NAAQS, and the 2008 lead and ozone NAAQS. During the public comment period, EPA received adverse comment on West Virginia State Rule 45CSR14 and the extent to which condensables were not included in the rule. The commenter stated that West Virginia’s PSD regulations did not properly account for condensable emissions of PM. The inclusion of condensable emissions of PM is required by the Federal counterpart language in 40 CFR 52.21 and 51.166 and the NSR PM2.5 Rule. In light of this comment, in an October 17, 2012 final rule (77 FR 63736), EPA granted full approval of West Virginia’s August 2011 SIP submission, as well as the PSD portions of other related infrastructure SIP submissions required by the CAA, with the exception of the narrow issue of the requirement to include condensables in the definition of “regulated NSR pollutant.” In the October 17, 2012 final rule, EPA stated that West Virginia State Rule 45CSR14 would be reviewed to determine the extent to which condensables were addressed in the August 2011 SIP submission and that this issue would be addressed in a separate rulemaking action. See 77 FR 63736.

II. Summary of SIP Revision

As previously stated, on October 17, 2012, EPA granted full approval to the August 2011 SIP submission and PSD portions of other related infrastructure elements required by the CAA, with the exception of the narrow issue of the requirement to include condensables in the definition of “regulated NSR pollutant.” Subsequently, EPA has reviewed the remaining portion of the West Virginia August 2011 SIP submission regarding the definition of “regulated NSR pollutant” and is proposing to determine that condensable emissions are omitted from the 45CSR14 definition of “regulated NSR pollutant.” Therefore, this remaining portion of the August 2011 SIP submission does not satisfy the requirements of the corresponding Federal definition of “regulated NSR pollutant” and the NSR PM2.5 Rule. EPA is therefore proposing to disapprove this remaining narrow portion of the August 2011 SIP submission. Also, because condensable emissions are a requirement for a PSD program by CAA section 110(a)(2)(C), (D)(ii)(I) and (J), EPA is proposing to disapprove the narrow part of the PSD portions related to the definition of “regulated NSR pollutant” in other related West Virginia infrastructure SIP submissions required by the CAA which are necessary to implement, maintain, and enforce the 1997 PM2.5 and ozone NAAQS, the 2006 PM2.5 NAAQS, and the 2008 lead and ozone NAAQS.

III. Proposed Action

EPA is proposing to disapprove the narrow portion of West Virginia’s August 2011 SIP submission related to the failure to include condensables in the “regulated NSR pollutant” definition on which we took no action in the October 17, 2012 final rule. See 77 FR 63736.

Specifically, EPA is proposing to disapprove a narrow portion of West Virginia’s August 2011 SIP submission because it does not satisfy the requirement that PM2.5 and PM10 emissions shall include gaseous emissions from a source or activity which condense to form PM at ambient temperatures. Because these grounds for disapproval are narrow and extend only to the lack of condensable emissions within the definition of “regulated NSR pollutant,” this proposal does not alter EPA’s October 17, 2012 approval of the remaining portions of West Virginia’s August 2011 SIP submittal.

Additionally, EPA is proposing to disapprove specific portions of West Virginia’s infrastructure SIP submissions dated December 3, 2007, December 11, 2007, April 3, 2008, October 1, 2009, October 26, 2011, and February 17, 2012 (collectively, the West Virginia Infrastructure SIP Submissions) which address certain obligations set forth at CAA sections 110(a)(2)(C), (D)(ii)(I) and (J) relating to the West Virginia PSD permit program. In the October 17, 2012 final rule, EPA granted full approval of the PSD portions of the West Virginia infrastructure SIP submissions, with the exception of the narrow issue of the requirement to include condensables in the definition of “regulated NSR pollutant.” Because West Virginia’s definition of “regulated NSR pollutant” in 45CSR14 does not address condensables, EPA is proposing to determine that West Virginia’s infrastructure SIP submissions do not meet certain statutory and regulatory obligations relating to a PSD permit program set forth at CAA sections 110(a)(2)(C), (D)(ii)(I) and (J) for the narrow issue of condensables as set forth in the table below. EPA is proposing to disapprove the narrow portion of the October 26, 2011 and February 17, 2012 infrastructure SIP submissions from West Virginia because West Virginia has not met its obligations relating to the PSD permit program pursuant to CAA section 110(a)(2)(D)(ii)(I) for the 1997 PM2.5 and ozone NAAQS and the 2006 PM2.5 NAAQS due to the failure to include condensables in the definition of “regulated NSR pollutant.” EPA is also proposing to disapprove the narrow portion of the December 3, 2007, December 11, 2007, April 3, 2008, and October 1, 2009 infrastructure SIP submissions from West Virginia because West Virginia has not met its obligations relating to a PSD permit program pursuant to CAA section 110(a)(2)(D)(ii)(I) for the 1997 PM2.5 and ozone NAAQS and the 2006 PM2.5 NAAQS due to the failure to include condensables in the definition of “regulated NSR pollutant.” Specific infrastructure elements and submittal dates are listed in the following table.

<table>
<thead>
<tr>
<th>Submittal(s) dated</th>
<th>NAAQS</th>
<th>Infrastructure element(s) proposed to be disapproved in this action</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 1, 2009</td>
<td>2006 PM2.5</td>
<td>110(a)(2)(D)(ii)(I).</td>
</tr>
<tr>
<td>October 26, 2011</td>
<td>2008 lead</td>
<td>110(a)(2)(D)(ii)(I), (C), and (J).</td>
</tr>
<tr>
<td>February 17, 2012</td>
<td>2008 ozone</td>
<td>110(a)(2)(D)(ii)(I), (C), and (J).</td>
</tr>
</tbody>
</table>

Under CAA section 179(a), final disapproval of a submission that addresses a requirement of a Part D Plan (CAA sections 171–193), or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) starts a sanction clock. The specific provisions in the submissions we are proposing to disapprove, due to
the omission of condensables in the definition of “regulated NSR pollutant,” were not submitted by West Virginia to meet either of those requirements. Therefore, if EPA takes final action to disapprove these submissions, no sanctions under CAA section 179 will be triggered.

The full or partial disapproval of a SIP revision triggers the requirement under CAA section 110(c) that EPA promulgate a Federal Implementation Plan (FIP) no later than two years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. From discussions with the State, EPA anticipates that WVDEP will make a submission rectifying the deficiency regarding condensables. Further, EPA anticipates acting on WVDEP’s submissions within the two year time frame prior to our FIP obligation on this very narrow issue. In the interim, EPA expects WVDEP to account for condensable emissions of PM consistent with Federal regulations for PSD permitting. EPA is soliciting public comments only on the issues discussed in this document. These comments will be considered before taking final action.

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 CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(c). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. In this case, EPA is proposing to disapprove a narrow portion of the West Virginia August 2011 SIP submittal and PSD portions of other related infrastructure submissions required by the CAA that do not meet Federal requirements. This proposed 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.);

• Is not subject to requirements of the National Environmental Policy 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 discretion to deny approval of SIP revisions in light of applicable Federal requirements, Sulfur oxides, Volatile Organic Compounds, and Reporting and recordkeeping requirements, Lead, and Intergovernmental relations, Lead, Nitrogen Dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 6, 2013.

W.C. Early,
Acting Regional Administrator, Region III.

[FR Doc. 2013–06068 Filed 3–14–13; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52


Approval and Promulgation of Implementation Plans; North Dakota; Regional Haze State Implementation Plan; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Regional Haze; Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 6, 2012, EPA published a final rule partially approving and partially disapproving a North Dakota State Implementation Plan (SIP) submittal addressing regional haze submitted by the Governor of North Dakota on March 3, 2010, along with SIP Supplement No. 1 submitted on July 27, 2010, and part of SIP Amendment No. 1 submitted on July 28, 2011. The Administrator subsequently received a petition requesting EPA to reconsider certain provisions in the final rule. Specifically, the petition raised several objections to EPA’s approval of the State’s best available retrofit technology (BART) emission limits for nitrogen oxides (NOx) for Milton R. Young Station Units 1 and 2 and Leland Olds Station Unit 2, which are coal-fired power plants in North Dakota. In this action, EPA is initiating the reconsideration of its approval of the NOx BART limits for these units, proposing to affirm its approval of those limits, and requesting comment on this proposal. We are not reconsidering or requesting comment on any other provisions of the final rule.

DATES: Comments: Comments must be received on or before May 14, 2013 unless a public hearing is held, which would extend the comment period (see below).

Public Hearing: If anyone contacts EPA requesting to speak at a public meeting by April 8, 2013, a public hearing will be held in May 2013 in Bismarck, North Dakota. If a public hearing is held, the record for this action will remain open for 30 days after the hearing to accommodate submittal of information related to a public hearing and any other comments on this action, and EPA will publish a document in the Federal Register extending the comment period. For more information on the public hearing and requests to speak, see the General Information section of this preamble.