

effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action” requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans

Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

#### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Interim Chief of Staff, Department of Veterans Affairs, approved this document on April 11, 2013 for publication.

#### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and Dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: April 17, 2013 .

**Robert C. McFetridge,**

*Director of Regulation Policy and Management, Office of General Counsel, Department of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 17 as set forth below:

#### PART 17—MEDICAL

- 1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

- 2. Amend § 17.111 by:
  - a. Revising paragraph (d)(2)(vi).
  - b. Removing paragraph (g).

The revision reads as follows:

#### § 17.111 Copayments for extended care services.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(vi) *Spousal resource protection amount* means the value of liquid assets equal to the Maximum Community Spouse Resource Standard published by the Centers for Medicare and Medicaid Services (CMS) as of January 1 of the current calendar year if the spouse is

residing in the community (not institutionalized).

\* \* \* \* \*

[FR Doc. 2013-09396 Filed 4-19-13; 8:45 am]

BILLING CODE 8320-01-P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA-R04-OAR-2012-0894; FRL-9804-9]

#### Approval and Promulgation of Implementation Plans; Tennessee: New Source Review-Prevention of Significant Deterioration

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve, through parallel processing, portions of a draft revision to the Tennessee State Implementation Plan (SIP) submitted by the Tennessee Department of Environment and Conservation (TDEC) through the Division of Air Pollution Control, on October 4, 2012. The draft SIP revision modifies Tennessee’s New Source Review (NSR) Prevention of Significant Deterioration (PSD) program to adopt, into the Tennessee SIP, federal PSD requirements regarding fine particulate matter ( $PM_{2.5}$ ) increments. EPA is proposing to approve portions of Tennessee’s October 4, 2012, SIP revision because the Agency has preliminarily determined that it is consistent with the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting.

**DATES:** Comments must be received on or before May 22, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2012-0894 by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.

2. Email: [R4-RDS@epa.gov](mailto:R4-RDS@epa.gov).

3. Fax: (404) 562-9019.

4. Mail: EPA-R04-OAR-2012-0894, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960.

5. Hand Delivery or Courier: Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW.,

Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**Instructions:** Direct your comments to Docket ID No. "EPA–R04–OAR–2012–0894." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov) or email, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://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](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., 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 in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency,

Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Tennessee SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; email address: [bradley.twunjala@epa.gov](mailto:bradley.twunjala@epa.gov). For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone number is (404) 562–9241; email address: [adams.yolanda@epa.gov](mailto:adams.yolanda@epa.gov). For information regarding the PM<sub>2.5</sub> national ambient air quality standards (NAAQS), contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Mr. Huey's telephone number is (404) 562–9104; email address: [huey.joel@epa.gov](mailto:huey.joel@epa.gov).

#### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. What is parallel processing?
- II. What action is EPA proposing?
- III. What is the background for EPA's proposed action?
- IV. What is EPA's analysis of Tennessee's SIP revision?
- V. Proposed Action
- VI. Statutory and Executive Order Reviews

#### I. What is parallel processing?

Consistent with EPA regulations found at 40 CFR Part 51, Appendix V, section 2.3.1, for purposes of expediting review of a SIP submittal, parallel processing allows a state to submit a plan to EPA prior to actual adoption by the state. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA's notice of proposed rulemaking is published in the **Federal Register** during the same time frame that the state is holding its public process. The state and EPA then concurrently provide public comment periods on both the proposed state and federal actions.

If the revision that is finally adopted and submitted by the state is changed in aspects other than those identified in

the proposed rulemaking on the parallel process submission, EPA will evaluate those changes and, if necessary and appropriate, issue another notice of proposed rulemaking to provide the public with notice of those changes. Any final rulemaking action by EPA will occur only after the SIP revision has been adopted by the state and submitted formally to EPA for incorporation into the SIP.

On October 4, 2012, the State of Tennessee, through TDEC, submitted a request for parallel processing of a draft SIP revision that the State has taken through public comment. TDEC requested parallel processing so that EPA could begin to take action on its draft SIP revisions in advance of the State's submission of the final SIP revisions. As stated above, the final rulemaking action by EPA will occur only after the SIP revision has been: (1) Adopted by Tennessee; (2) submitted formally to EPA for incorporation into the SIP; and, (3) evaluated by EPA, including any changes made by the State after the October 4, 2012, draft was submitted to EPA.

#### II. What action is EPA proposing?

On October 4, 2012, TDEC submitted a draft SIP revision to EPA for approval into the Tennessee SIP to adopt rules equivalent to federal requirements for NSR permitting. The SIP submittal changes Tennessee's Air Quality Regulations, Chapter 1200–03–09—*Construction and Operating Permits*, Rule Number .01—Construction Permits, to adopt PSD requirements related to the implementation of the PM<sub>2.5</sub> NAAQS as promulgated in the rule entitled "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC), Final Rule," 75 FR 64864 (October 20, 2010) (hereafter referred to as the "PM<sub>2.5</sub> PSD Increments-SILs-SMC Rule"). However, in this action EPA is not proposing to approve Tennessee's adoption of the PM<sub>2.5</sub> SIL thresholds and provisions, or the SMC promulgated in EPA's PM<sub>2.5</sub> PSD Increments-SILs-SMC Rule.<sup>1</sup> EPA is proposing to approve the remainder of Tennessee's October 4, 2012, draft SIP revision because it is consistent with the CAA and EPA regulations regarding NSR permitting.

<sup>1</sup> TDEC has indicated that the final SIP revision related to the PM<sub>2.5</sub> PSD Increments-SILs-SMC Rule will include a request that EPA not take action on the SIL thresholds and provisions or the SMC portions of its SIP revision. See Section IV below for more details.

In addition on February 26, 2013, Tennessee provided a final submission to EPA which corrects the State's definition of *regulated NSR pollutant* at Chapter 1200–03–09–01(4)(b)47(vi) by removing the term "particulate matter (PM) emissions" from the condensable PM requirements to be consistent with EPA's October 25, 2012, rulemaking entitled "Review (NSR) Program for Particulate Matter Less Than 2.5

Micrometers (PM<sub>2.5</sub>): Amendment to the Definition of "Regulated NSR Pollutant" Concerning Condensable Particulate Matter, Final Rule," (hereafter referred to as the Condensable PM Correction Rule). *See* 77 FR 65107. EPA never took action to include this term into Tennessee's SIP. Therefore, this submission is administrative in nature to correct Tennessee's state laws and does not require any action by EPA—EPA is simply pointing out this issue for clarification purposes. Please see section III.B for more information.

### **III. What is the background for EPA's proposed action?**

Today's proposed action to revise Tennessee's SIP relates to PSD provisions promulgated in EPA's PM<sub>2.5</sub> PSD Increments-SILs-SMC Rule. More detail on the PM<sub>2.5</sub> PSD Increments-SILs-SMC Rule can be found in EPA's October 20, 2010, final rulemaking and is summarized below. *See* 75 FR 64864. For more information on the NSR Program and the PM<sub>2.5</sub> NAAQS, please refer to the PM<sub>2.5</sub> PSD Increments-SILs-SMC Rule.

#### *A. PM<sub>2.5</sub> PSD Increments-SILs-SMC Rule*

On October 20, 2010, EPA finalized the PM<sub>2.5</sub> PSD Increments-SILs-SMC Rule to implement the PM<sub>2.5</sub> NAAQS for NSR. This included establishing required PM<sub>2.5</sub> increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS. Today's action pertains only to the PM<sub>2.5</sub> increments (and relevant related revisions) promulgated in the October 20, 2010, rule.<sup>2</sup>

Tennessee's October 4, 2012, draft SIP revision adopts NSR changes promulgated in the PM<sub>2.5</sub> PSD Increments-SILs-SMC Rule to be consistent with the federal NSR regulations and to appropriately implement the State's NSR program for the PM<sub>2.5</sub> NAAQS. For the reasons

<sup>2</sup> The October 20, 2010, rule also established PM<sub>2.5</sub> SILs and SMC. *See* 75 FR 64864, 64900. These two provisions were the subject of litigation by the Sierra Club. *See* section IV of this rulemaking for more information on the litigation or in the docket for today's proposed action using docket ID: EPA-R04-OAR-2012-0894.

explained below, EPA is not proposing in this rulemaking to take action to approve Tennessee's proposed revisions related to the SILs (at paragraph (k)(2) of section 51.166 and 52.21) and SMC (at paragraph (i)(5) of section 51.166 and 52.21) promulgated in the PM<sub>2.5</sub> PSD Increments-SILs-SMC Rule into the Tennessee SIP. The SILs and SMC portions of the PM<sub>2.5</sub> PSD Increments-SILs-SMC Rule were recently vacated (and in the case of the SILs, also remanded to EPA) by the D.C. Circuit Court of Appeals *See Sierra Club v. EPA*, 705 F.3d 458 (D.C. Cir. 2013). More details regarding Tennessee's changes to its PSD regulations and SILs-SMC litigation are also summarized below.

#### **1. What are PSD increments?**

As established in part C of title I of the CAA, EPA's PSD program protects public health from adverse effects of air pollution by ensuring that construction of new or modified sources in attainment or unclassifiable areas does not lead to significant deterioration of air quality while simultaneously ensuring that economic growth will occur in a manner consistent with preservation of clean air resources. Under section 165(a)(3) of the CAA, a PSD permit applicant must demonstrate that emissions from the proposed construction and operation of a facility "will not cause, or contribute to, air pollution in excess of any maximum allowable increase or allowable concentration for any pollutant." In other words, when a source applies for a permit to emit a regulated pollutant in an area that is designated as attainment or unclassifiable for a NAAQS, the state and EPA must determine if emissions of the regulated pollutant from the source will cause significant deterioration in air quality. Significant deterioration occurs when the amount of the new pollution exceeds the applicable PSD increment, which is the "maximum allowable increase" of an air pollutant allowed to occur above the applicable baseline concentration<sup>3</sup> for that pollutant. PSD increments prevent air quality in clean (e.g., attainment) areas from deteriorating to the level set by the NAAQS. Therefore, an increment is the mechanism used to estimate "significant deterioration" of air quality for a pollutant in an area.

For PSD baseline purposes, a baseline area for a particular pollutant emitted from a source includes the attainment or

unclassifiable area in which the source is located as well as any other attainment or unclassifiable area in which the source's emissions of that pollutant are projected (by air quality modeling) to result in an ambient pollutant increase of at least 1 microgram per meter cubed ( $\mu\text{g}/\text{m}^3$ ) (annual average). *See* 40 CFR 52.21(b)(15)(i). Under EPA's existing regulations, the establishment of a baseline area for any PSD increment results from the submission of the first complete PSD permit application and is based on the location of the proposed source and its emissions impact on the area. Once the baseline area is established, subsequent PSD sources locating in that area need to consider that a portion of the available increment may have already been consumed by previous emissions increases. In general, the submittal date of the first complete PSD permit application in a particular area is the operative "baseline date" after which new sources must evaluate increment consumption.<sup>4</sup> On or before the date of the first complete PSD application, emissions generally are considered to be part of the baseline concentration, except for certain emissions from major stationary sources. Most emissions increases that occur after the baseline date will be counted toward the amount of increment consumed. Similarly, emissions decreases after the baseline date restore or expand the amount of increment that is available. *See* 75 FR 64864. As described in the PM<sub>2.5</sub> PSD Increments-SILs-SMC Rule, and pursuant to the authority under section 166(a) of the CAA, EPA promulgated numerical increments for PM<sub>2.5</sub> as a new pollutant<sup>5</sup> for which NAAQS were established after August 7, 1977,<sup>6</sup> and derived 24-hour and annual PM<sub>2.5</sub> increments for the three area classifications (Class I, II and III) using the "contingent safe harbor" approach. *See* 75 FR 64864 at 64869 and the

<sup>4</sup> Baseline dates are pollutant-specific. That is, a complete PSD application establishes the baseline date only for those regulated NSR pollutants that are projected to be emitted in significant amounts (as defined in the regulations) by the applicant's new source or modification. Thus, an area may have different baseline dates for different pollutants.

<sup>5</sup> EPA generally characterized the PM<sub>2.5</sub> NAAQS as a NAAQS for a new indicator of PM. EPA did not replace the PM<sub>10</sub> NAAQS with the NAAQS for PM<sub>2.5</sub> when the PM<sub>2.5</sub> NAAQS were promulgated in 1997. EPA rather retained the annual and 24-hour NAAQS for PM<sub>2.5</sub> as if PM<sub>2.5</sub> was a new pollutant even though EPA had already developed air quality criteria for PM generally. *See* 75 FR 64864 (October 20, 2010).

<sup>6</sup> EPA interprets 166(a) to authorize EPA to promulgate pollutant-specific PSD regulations meeting the requirements of section 166(c) and 166(d) for any pollutant for which EPA promulgates a NAAQS after 1977.

<sup>3</sup> Section 169(4) of the CAA provides that the baseline concentration of a pollutant for a particular baseline area is generally the air quality at the time of the first application for a PSD permit in the area.

ambient air increment table at 40 CFR 51.166(c)(1) and 52.21(c).

In addition to PSD increments for the PM<sub>2.5</sub> NAAQS, the PM<sub>2.5</sub> PSD Increments-SILs-SMC Rule amended the definition at 40 CFR 51.166 and 52.21 for “major source baseline date” and “minor source baseline date” (including trigger dates) to establish the PM<sub>2.5</sub> NAAQS specific dates associated with the implementation of PM<sub>2.5</sub> PSD increments. See 75 FR 64864. In accordance with section 166(b) of the CAA, EPA required the states to submit revised implementation plans to EPA for approval (to adopt the PM<sub>2.5</sub> PSD increments) within 21 months from promulgation of the final rule (by July 20, 2012). Regardless of when a state submits its revised SIP, the emissions from major sources subject to PSD for PM<sub>2.5</sub> for which construction commenced after October 20, 2010 (major source baseline date), consume PM<sub>2.5</sub> increment and should be included in the increment analyses occurring after the minor source baseline date is established for an area under the state’s revised PSD program. See 75 FR 64864. As discussed above, Tennessee’s October 4, 2012, draft SIP revision adopts the PM<sub>2.5</sub> PSD increment permitting requirements promulgated in the PM<sub>2.5</sub> PSD Increments-SILs-SMC Rule.

#### B. Condensable PM Correction

On May 16, 2008, EPA finalized the NSR PM<sub>2.5</sub> Rule<sup>7</sup> to implement the PM<sub>2.5</sub> NAAQS including a revision to the definition of “regulated NSR pollutant” for PSD to add a paragraph providing that “particulate matter (PM) emissions,” “PM<sub>2.5</sub> emissions” and “PM<sub>10</sub> emissions” shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures and that on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM<sub>2.5</sub> and PM<sub>10</sub> in permits. See 73 FR 28321, 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(vi) and “Emissions Offset Interpretative Ruling” (40 CFR part 51, appendix S).<sup>8</sup>

<sup>7</sup> The NSR PM<sub>2.5</sub> Rule entitled “Implementation of the New Source Review Program for Particulate Matter Less than 2.5 Micrometers.” Final Rule, 73 FR 28321 (May 16, 2008) revised the federal NSR program requirements at 40 CFR 51.166, 51.165, 52.21 and Emissions Offset Interpretative Ruling” (40 CFR part 51, appendix S) to establish the framework for implementing preconstruction permit review for the PM<sub>2.5</sub> NAAQS in both attainment and nonattainment areas.

<sup>8</sup> A similar paragraph added to the nonattainment new source review (NNSR) rule does not include

On March 16, 2012, however, EPA proposed the Condensable PM Correction Rule<sup>9</sup> to revise the definition of “regulated NSR pollutant” to remove the inadvertent requirement (established in the NSR PM<sub>2.5</sub> Rule) that the measurement of condensable “particulate matter emissions” be included as part of the measurement and regulation of particulate matter.<sup>10</sup> (See 77 FR 15656). At the time of EPA’s proposal for the Condensable PM Correction rule, EPA was also considering approval of Tennessee’s July 29, 2011, SIP revision adopting the NSR permitting requirements promulgated in the May 16, 2008, NSR PM<sub>2.5</sub> Rule including the term “particulate matter emissions,” in the definition of “regulated NSR pollutant.”

As a result of EPA’s March 16, 2012, proposed rulemaking, Tennessee submitted a letter to EPA on May 1, 2012, requesting that EPA not approve the term “particulate matter emissions” into the Tennessee SIP (at rule 1200–03–09–01(4)(b)47(vi)) as part of the definition for “regulated NSR pollutant.” Consistent with this request, EPA took final action to approve Tennessee’s July 29, 2011, NSR PM<sub>2.5</sub> Rule SIP revision on July 30, 2012, excluding the term “particulate matter emissions,” and at the time did not act on the portion of Tennessee’s revised “regulated NSR pollutant” definition as requested by the State. See 77 FR 44481. EPA finalized the Condensable PM Correction Rule on October 25, 2012. In an effort to be consistent with EPA’s final Condensable PM Correction Rule, Tennessee’s February 23, 2013, submittal removed the term “particulate matter emissions” from the Tennessee’s state law definition for “regulated NSR pollutant.” EPA interprets this February 23, 2013, submittal as superceding the portion of Tennessee’s July 29, 2011, submittal that purported to include the term “particulate matter emissions,” in the definition of “regulated NSR pollutant.” As such, there is no longer a SIP submittal to include the term

the term “particulate matter emissions.” See 40 CFR 51.165(a)(1)(xxxvii)(D).

<sup>9</sup> The rulemaking proposed to remove the term “particulate matter emissions” from federal PSD regulations at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(vi) and part 51, appendix S (“Emissions Offset Interpretative Ruling”).

<sup>10</sup> The term “particulate matter emissions” includes particles that are larger than PM<sub>2.5</sub> and PM<sub>10</sub> and is an indicator measured under various New Source Performance Standards (NSPS) (40 CFR part 60). 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.

“particulate matter emissions” in the definition of “regulated NSR pollutant” before the Agency, and thus, no further action is required as the provision was never approved into the SIP.

#### IV. What is EPA’s analysis of Tennessee’s SIP revision?

Tennessee currently has a SIP-approved NSR program for new and modified stationary sources. TDEC’s PSD preconstruction rules are found at Air Quality Regulations, Chapter 1200–03–09—Construction and Operating Permits, Rule Number .01—Construction Permits and apply to major stationary sources or modifications constructed in areas designated attainment areas or unclassifiable/attainment areas as required under part C of title I of the CAA with respect to the NAAQS. TDEC’s October 4, 2012, draft SIP revision asks EPA to approve the following provisions into the Tennessee SIP at Chapter 1200–03–09.01(4) as promulgated in the October 20, 2010, PM<sub>2.5</sub> PSD Increments-SILs-SMC Rule: (1) PSD increments for PM<sub>2.5</sub> annual and 24-hour NAAQS pursuant to section 166(a) of the CAA; (2) SILs used as a screening tool (used by a major source subject to PSD) to evaluate the impact a proposed major source or modification may have on the NAAQS or PSD increment; and, (3) a SMC to determine the level of data gathering required of a major source in support of its PSD permit application for PM<sub>2.5</sub> emissions.

Specifically, Tennessee’s October 4, 2012, draft SIP revision asks EPA to approve into the SIP the following PM<sub>2.5</sub> PSD provisions promulgated October 20, 2010: (1) The PM<sub>2.5</sub> PSD increments at TDEC’s ambient air increments table Rule 1200–03–09–01(4)(f); (2) revisions to the definition of “baseline date” at Rule 1200–03–09–01(4)(b)15 to establish the PM<sub>2.5</sub> “major source baseline date” (consistent with 40 CFR 51.166(b)(14)(i)(a) and (c)) and to establish the PM<sub>2.5</sub> “trigger date” used for determining the “minor source baseline date” (consistent with 40 CFR 51.166(b)(14)(ii)(c)); and, (3) a revision to the definition of “baseline area” at Rule 1200–03–09–01(4)(b)14 to specify pollutant air quality impact annual averages (consistent with 40 CFR 51.166(b)(15)(i) and (ii)). These changes provide for the implementation of the PM<sub>2.5</sub> PSD increments for the PM<sub>2.5</sub> NAAQS in the State’s PSD program. In today’s action, EPA is proposing to approve Tennessee’s October 4, 2012, draft SIP revision to address PM<sub>2.5</sub> PSD increments.

On December 4, 2012, EPA submitted an official comment letter to TDEC

regarding the State's October 4, 2012, draft SIP revision, documenting the omission of (1) the PM<sub>2.5</sub> increments in Tennessee's Class I variance provisions at 1200–03–09–01(4)(n)3, including the administrative change to replace the term "particulate matter" with "PM<sub>2.5</sub>, PM<sub>10</sub>" (consistent with federal rule at 40 CFR 51.166(c) and (p)(5)); and (2) the administrative changes to the definition of "baseline date" at 1200–03–09–01(4)(b)15(i) and (ii)(I) to replace the term "particulate matter" with "PM<sub>10</sub>." TDEC has indicated they intend to address these inadvertent omissions in the final SIP submission to be consistent with the federal provisions promulgated in the PM<sub>2.5</sub> PSD Increments-SIL-SMC rule.

EPA's authority to implement the PM<sub>2.5</sub> SILs at paragraph (k)(2) of section 51.166 and 52.21 and SMC at paragraph (i)(5) of section 51.166 and 52.21 for PSD purposes as promulgated in the October 20, 2010 PM<sub>2.5</sub> PSD Increments-SILs-SCM Rule, was challenged by the Sierra Club. *Sierra Club v. EPA*, 705 F.3d 458 (D.C. Cir. 2013). On January 22, 2013, the D.C. Circuit Court issued an order vacating and remanding to the EPA for further consideration those portions of the October 20, 2010, rule addressing the PM<sub>2.5</sub> SILs, except for the parts codifying the PM<sub>2.5</sub> SILs in the NSR rule at 40 CFR 51.165(b)(2). In addition the D.C. Circuit Court also vacated parts of the October 20, 2010, rule establishing the PM<sub>2.5</sub> SMC finding that those parts of the rule exceed the EPA's statutory authority. *Sierra Club v. EPA*, 705 F.3d 458, 469. See the docket for today's action for more information on the litigation and the court's decision using docket ID EPA-R04-OAR-2012-0894. As a result of the January 22, 2013, D.C. Circuit order and consultations with EPA Region 4, TDEC has indicated that in the State's final SIP submission to adopt the regulations promulgated in the PM<sub>2.5</sub> Increments-SILs-SCM Rule, they intend to request EPA not take action to approve into the Tennessee SIP the PM<sub>2.5</sub> SILs and SMC. Accordingly, EPA is not proposing action at this time on any portions of Tennessee's PSD SIP submission regarding the PM<sub>2.5</sub> SILs and SMC provisions described at 40 CFR 51.166 and 52.21, which have now been vacated and remanded.

## V. Proposed Action

EPA is proposing to approve portions of Tennessee's October 4, 2012, draft SIP revision adopting PSD PM<sub>2.5</sub> Increments promulgated in the October 20, 2010, PM<sub>2.5</sub> PSD Increments-SILs-SCM rule. EPA is not, however, proposing action to approve in this

rulemaking the portion of Tennessee's October 4, 2012, draft SIP revision incorporating the PM<sub>2.5</sub> SILs and SMC thresholds and provisions promulgated in EPA's PM<sub>2.5</sub> PSD Increment-SILs-SCM Rule. EPA has reviewed Tennessee's October 4, 2012, draft SIP revision, and has made the preliminary determination that this portion of the draft SIP revision is approvable because it is consistent with section 110 of the CAA and EPA regulations regarding NSR permitting.

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this 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.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 F43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human

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

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

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: April 8, 2013.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2013-09316 Filed 4-19-13; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 121024581-3333-01]

RIN 0648-BC71

#### List of Fisheries for 2013

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** The National Marine Fisheries Service (NMFS) publishes its proposed List of Fisheries (LOF) for 2013, as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2013 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The classification of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan (TRP) requirements. The fishery classifications and list of marine