ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0080; FRL–9684–1]

Approval and Promulgation of Implementation Plans; Tennessee: Prevention of Significant Deterioration and Nonattainment New Source Review; Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to approve changes to the Tennessee State Implementation Plan (SIP), submitted by the Tennessee Department of Environment and Conservation (TDEC) through the Division of Air Pollution Control to EPA on July 29, 2011. The July 29, 2011, SIP revision modifies Tennessee's New Source Review (NSR) Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs. Tennessee's July 29, 2011, SIP revision proposes to incorporate, into the Tennessee SIP, NSR provisions for fine particulate matter (also known as $PM_{2.5}$) as amended in EPA's 2008 NSR $PM_{2.5}$ Implementation Rule (hereafter referred to as the ''NSR $PM_{2.5}$ Rule''). EPA is proposing approval of the July 29, 2011, SIP revision because the Agency has preliminarily determined that the revision is consistent with the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting.

DATES: Comments must be received on or before July 11, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0080 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2012–0080, 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–2012–0080.'' 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 through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. 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. 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* 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* 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.* 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.* For information regarding the $PM_{2.5}$ 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.*

SUPPLEMENTARY INFORMATION:

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I. What action is EPA proposing?

On July 29, 2011, TDEC submitted a SIP revision to EPA for approval into the Tennessee SIP to adopt rules equivalent to federal requirements for NSR permitting.[1] Tennessee's July 29, 2011, SIP revision includes changes to Tennessee's Air Quality Regulations, Chapter 1200–03–09—Construction and Operating Permits, Rule Number .01—Construction Permits, to adopt PSD and NNSR requirements related to the implementation of the NSR $PM_{2.5}$ Rule. The rule changes adopted required federal PSD and NNSR permitting provisions governing the implementation of the NSR program for the $PM_{2.5}$ NAAQS promulgated in the NSR $PM_{2.5}$ Rule. Also, Tennessee's July 29, 2011, SIP revision includes

[1] Tennessee's July 29, 2011, submittal also contains changes to Tennessee Chapter 1200–03–26—Administrative Fees Schedule provisions. EPA is not proposing action on this part of the submittal as these provisions are not part of the federally-approved Tennessee SIP.

clarifying changes to rule 1200–03–09—.01. Pursuant to section 110 of the CAA, EPA is proposing to approve these changes into the Tennessee SIP.

Additionally, EPA is not taking action to approve a portion of Tennessee's July 29, 2011, SIP revision regarding the applicability of the term ''particulate matter emissions'' when accounting for condensable particles in applicability determinations and in establishing emissions limitations in PSD permits. More details are provided in Sections II and III below.

II. What is the background for EPA's proposed action?

Today's proposed action to revise the Tennessee SIP relates to EPA's ''Implementation of the New Source Review Program for Particulate Matter Less than 2.5 Micrometers,'' Final Rule, 73 FR 28321 (May 16, 2008) (the ''NSR $PM_{2.5}$ Rule''). In the NSR $PM_{2.5}$ Rule, EPA finalized regulations to implement the NSR program for the $PM_{2.5}$ NAAQS. As a result of EPA's final NSR $PM_{2.5}$ Rule, states were required to provide SIP submissions no later than May 16, 2011, to address these requirements for both the PSD and NNSR programs. Tennessee's July 29, 2011, SIP revision addresses the PSD and NNSR requirements for the $PM_{2.5}$ NAAQS. More detail on the NSR $PM_{2.5}$ Rule can be found in EPA's May 16, 2008, final rule and is summarized below.

A. Fine Particulate Matter and the NAAQS

Fine particles in the atmosphere are made up of a complex mixture of components. Common constituents include sulfate; nitrate; ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as ''crustal'' material, although it may contain material from other sources. Airborne particulate matter (PM) with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) are considered to be ''fine particles'' and are also known as $PM_{2.5}$. ''Primary'' particles are emitted directly into the air as a solid or liquid particle (e.g., elemental carbon from diesel engines or fire activities, or condensable organic particles from gasoline engines). ''Secondary'' particles (e.g., sulfate and nitrate) form in the atmosphere as a result of various chemical reactions.

The health effects associated with exposure to $PM_{2.5}$ include potential aggravation of respiratory and cardiovascular disease (i.e., lung disease, decreased lung function asthma attacks and certain cardiovascular issues). Epidemiological studies have indicated a correlation between elevated $PM_{2.5}$ levels and premature mortality. Groups considered especially sensitive to $PM_{2.5}$ exposure include older adults, children, and individuals with heart and lung diseases. For more details regarding health effects and $PM_{2.5}$ see EPA's Web Site at *http://www.epa.gov/oar/particlepollution/* (See heading ''Health and Welfare'').

On July 18, 1997, EPA revised the NAAQS for PM to add new standards for fine particles, using $PM_{2.5}$ as the indicator. Previously, EPA used PM_{10} (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the PM NAAQS. EPA established health-based (primary) annual and 24-hour standards for $PM_{2.5}$, setting an annual standard at a level of 15.0 micrograms per cubic meter ($\mu g/m^3$) and a 24-hour standard at a level of 65 $\mu g/m^3$. *See* 62 FR 38652. At the time the 1997 primary standards were established, EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of $PM_{2.5,}$ such as visibility impairment, soiling, and materials damage. On October 17, 2006, EPA revised the primary and secondary 24-hour NAAQS for $PM_{2.5}$ to 35 $\mu g/m^3$ and retained the existing annual $PM_{2.5}$ NAAQS of 15.0 $\mu g/m^3$. *See* 71 FR 61236.

B. What is the NSR program?

The CAA NSR program is a preconstruction review and permitting program applicable to certain new and modified stationary sources of air pollutants regulated under the CAA. The program includes a combination of air quality planning and air pollution control technology requirements. The CAA NSR program is composed of three separate programs: PSD, NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS—''attainment areas''—as well as areas where there is insufficient information to determine if the area meets the NAAQS—''unclassifiable areas.'' The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—''nonattainment areas.'' The Minor NSR program addresses construction or modification activities that do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as NSR programs. EPA regulations governing the implementation of these programs are contained in 40 CFR sections 51.160–.166; 52.21, .24; and part 51, Appendix S.

Section 109 of the CAA requires EPA to promulgate a primary NAAQS to protect public health and a secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit a SIP to EPA for approval that includes emission limitations and other control measures to attain and maintain the NAAQS. *See* CAA § 110. Each SIP is also required to include a preconstruction review program for the construction and modification of any stationary source of air pollution to assure the maintenance of the NAAQS. The July 29, 2011, SIP revision revises Tennessee's PSD and NNSR programs.

C. Implementation of NSR Requirements for $PM_{2.5}$

On May 16, 2008, EPA finalized the NSR $PM_{2.5}$ Rule to implement the $PM_{2.5}$ NAAQS, including changes to the NSR program. *See* 73 FR 28321. The NSR $PM_{2.5}$ Rule revised the federal NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. Specifically, the NSR $PM_{2.5}$ Rule established the following NSR requirements to implement the $PM_{2.5}$ NAAQS: (1) Require NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) establish significant emission rates for direct $PM_{2.5}$ and precursor pollutants (including sulfur dioxide (SO_2) and nitrogen oxides (NO_X)); (3) establish $PM_{2.5}$ emission offsets; (4) provide exceptions to PM_{10} grandfather policy; and (5) require states to account for gases that condense to form particles (''condensables'') in $PM_{2.5}$ and PM_{10} emission limits in PSD or nonattainment NSR permits. Additionally, the NSR $PM_{2.5}$ Rule authorized states to adopt provisions in their nonattainment NSR rules that would allow interpollutant offset trading. Tennessee's July 29, 2011, SIP revision addresses the PSD and NNSR requirements related to EPA's May 16, 2008, NSR $PM_{2.5}$ Rule. A few key issues described in greater detail below include: the PM_{10} surrogate and grandfathering policy, condensable provision and interpollutant offset trading provision.

1. PM_{10} Surrogate and Grandfathering Policy

After EPA promulgated the NAAQS for $PM_{2.5}$ in 1997, the Agency issued a guidance document entitled ''Interim Implementation of New Source Review Requirements for $PM_{2.5}$.'' John S. Seitz, EPA, October 23, 1997 (the ''Seitz memo''). The Seitz memo was designed to help states implement NSR requirements pertaining to the new $PM_{2.5}$ NAAQS in light of technical difficulties posed by $PM_{2.5}$ at that time. Specifically, the Seitz memo stated: ''PM–10 may properly be used as a surrogate for PM–2.5 in meeting NSR requirements until these difficulties are resolved.'' EPA also issued a guidance document entitled ''Implementation of New Source Review Requirements in PM–2.5 Nonattainment Areas'' (the ''2005 $PM_{2.5}$ Nonattainment NSR Guidance''), on April 5, 2005, the date that EPA's $PM_{2.5}$ nonattainment area designations became effective for the 1997 NAAQS. This memorandum provided guidance on the implementation of the nonattainment major NSR provisions in $PM_{2.5}$ nonattainment areas in the interim period between the effective date of the $PM_{2.5}$ nonattainment area designations (April 5, 2005) and EPA's promulgation of final $PM_{2.5}$ NNSR regulations. Besides re-affirming the continuation of the PM_{10} Surrogate Policy for $PM_{2.5}$ attainment areas set forth in the Seitz memo, the 2005 $PM_{2.5}$ NNSR Guidance recommended that until EPA promulgated the $PM_{2.5}$ major NSR regulations, ''States should use a PM_{10} nonattainment major NSR program as a surrogate to address the requirements of nonattainment major NSR for the $PM_{2.5}$ NAAQS.''

In the NSR $PM_{2.5}$ Rule, EPA required that major stationary sources seeking permits must begin directly satisfying the $PM_{2.5}$ requirements, as of the effective date of the rule, rather than relying on PM_{10} as a surrogate, with two exceptions. The first exception is a ''grandfathering'' provision in the federal PSD program at 40 CFR 52.21(i)(1)(xi). This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008, effective date of the May 2008 final rule. The second exception was that states with SIP-approved PSD programs could continue to implement the Seitz Memo's PM_{10} Surrogate Policy for up to three years (until May 2011) or until the individual revised state PSD programs for $PM_{2.5}$ are approved by EPA, whichever comes first. For additional information on the NSR $PM_{2.5}$ Rule, see 73 FR 28321.[2]

On February 11, 2010, EPA proposed to repeal the grandfathering provision for $PM_{2.5}$ contained in the federal PSD program at 40 CFR 52.21(i)(1)(xi) and to end early the PM_{10} Surrogate Policy applicable in states that have a SIP-approved PSD program. *See* 75 FR 6827. In support of this proposal, EPA explained that the $PM_{2.5}$ implementation issues that led to the adoption of the PM_{10} Surrogate Policy in 1997 have been largely resolved to a degree sufficient for sources and permitting authorities to conduct meaningful permit-related $PM_{2.5}$ analyses.

On May 18, 2011 (76 FR 28646), EPA took final action to repeal the $PM_{2.5}$ grandfathering provision at 40 CFR 52.21(i)(1)(xi). This final action ended the use of the 1997 PM_{10} Surrogate Policy for PSD permits under the federal PSD program at 40 CFR 52.21. In effect, any PSD permit applicant previously covered by the grandfathering provision (for sources that completed and submitted a permit application before July 15, 2008) [3] that did not have a final and effective PSD permit before the effective date of the repeal will not be able to rely on the 1997 PM_{10} Surrogate Policy to satisfy the PSD requirements for $PM_{2.5}$ unless the application includes a valid surrogacy demonstration. *See* 76 FR 28646. In its July 29, 2011, SIP revision, Tennessee elected not to adopt the grandfathering provision at 40 CFR 52.21(i)(1)(xi), into its PSD regulations. Therefore, Tennessee's July 29, 2011, SIP revision is consistent with federal regulations since it does not contain the repealed grandfathering provision.

2. ''Condensable'' Provision

In the NSR $PM_{2.5}$ Rule, EPA revised the definition of ''regulated NSR pollutant'' for PSD and NNSR to add a paragraph providing that ''particulate matter (PM) emissions, $PM_{2.5}$ emissions and PM_{10} emissions'' shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures and that on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, $PM_{2.5}$ and PM_{10} in permits issued. See 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(vi) and ''Emissions Offset Interpretative Ruling'' (40 CFR Part 51, Appendix S). A similar paragraph added to the NNSR rule does not include ''particulate matter (PM) emissions.'' *See* 40 CFR 51.165(a)(1)(xxxvii)(D).

On March 12, 2012, EPA proposed a rulemaking to amend the definition of ''regulated NSR pollutant'' promulgated in the 2008 NSR $PM_{2.5}$ Rule regarding the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i) and EPA's Emissions Offset Interpretative Ruling. *See* 77 FR 15656. The rulemaking proposes to remove the inadvertent requirement in the NSR $PM_{2.5}$ Rule that the measurement of condensable ''particulate matter emissions'' be included as part of the measurement and regulation of ''particulate matter emissions.'' The term ''particulate matter emissions'' includes particles that are larger than $PM_{2.5}$ and PM_{10} and is an indicator measured under various New Source Performance Standards (NSPS) (40 CFR part 60).[4] Tennessee's July 29, 2011, SIP revision adopts EPA's definition for regulated NSR pollutant for condensables (at 40 CFR 51.166(b)(49)(vi)), including the term ''particulate matter emissions,'' as promulgated in the NSR $PM_{2.5}$ Rule. EPA's review of Tennessee's July 29, 2011, SIP revision with regards to the NSR $PM_{2.5}$ Rule condensable provision is provided below in Section III.

3. Interpollutant Trading Provision

The NSR $PM_{2.5}$ final Rule authorized states to adopt provisions in their NNSR rules that would allow major stationary sources and major modifications locating in areas designated nonattainment for $PM_{2.5}$ to offset emissions increases of direct $PM_{2.5}$ emissions or $PM_{2.5}$ precursors with reductions of either direct $PM_{2.5}$ emissions or $PM_{2.5}$ precursors in accordance with offset ratios contained in the approved SIP for the applicable nonattainment area. The inclusion, in whole or in part, of the interpollutant trading offset provisions for $PM_{2.5}$ is discretionary on the part of the states. In the preamble to the NSR $PM_{2.5}$ Rule, EPA included preferred or presumptive offset ratios, applicable to specific $PM_{2.5}$

[2] Additional information on this issue can also be found in an August 12, 2009, final order on a title V petition describing the use of PM_{10} as a surrogate for $PM_{2.5}$. In the Matter of *Louisville Gas & Electric Company,* Petition No. IV–2008–3, Order on Petition (August 12, 2009).

[3] Sources that applied for a PSD permit under the federal PSD program on or after July 15, 2008, are already excluded from using the 1997 PM_{10} Surrogate Policy as a means of satisfying the PSD requirements for $PM_{2.5}$. *See* 76 FR 28321.

[4] 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.

precursors that states may adopt in conjunction with the new interpollutant trading offset provisions for $PM_{2.5}$, and for which the state could rely on the EPA's technical work to demonstrate the adequacy of the ratios for use in any $PM_{2.5}$ nonattainment area. Alternatively, the preamble indicated that states may adopt their own ratios, subject to the EPA's approval, that would have to be substantiated by modeling or other technical demonstrations of the net air quality benefit for ambient $PM_{2.5}$ concentrations.

The preferred ratios were subsequently the subject of a petition for reconsideration which the EPA Administrator granted in 2009. As a result of the reconsideration, on July 21, 2011, EPA issued a memorandum entitled ''Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles ($PM_{2.5}$)'' (hereafter referred to as the ''Interpollutant Trading Memorandum''). The Interpollutant Trading Memorandum indicated that the existing preferred offset ratios are no longer considered presumptively approvable and that any precursor offset ratio submitted as part of the NSR SIP for a $PM_{2.5}$ nonattainment area must be accompanied by a technical demonstration showing the net air quality benefits of such ratio for the $PM_{2.5}$ nonattainment area in which it will be applied. Tennessee's July 29, 2011, SIP revision adopts the interpollutant policy but not the preferred trading ratios. EPA's analysis of Tennessee's July 29, 2011, SIP revision regarding interpollutant trading is provided below in Section III.

III. 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 rule 1200–3–9–.01(4) and apply to major stationary sources or modifications constructed in areas designated attainment as required under part C of title I of the CAA with respect to the NAAQS. TDEC's rule 1200–3–9–.01(5) includes permitting requirements for sources in and impacting nonattainment areas. Today, EPA is proposing to approve changes to Tennessee's rules at 1200–3–9–.01(4) and at 1200–3–9–.01(5) to update the State's existing NSR program to be consistent with federal NSR regulations, amended in the NSR $PM_{2.5}$ Rule (at 40 CFR 51.165 and 51.166).

Tennessee's July 29, 2011, SIP revision adopts the following NSR $PM_{2.5}$ Rule provisions into the Tennessee SIP at Chapter 12000–03–09: (1) Requirement for NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) significant emission rates for direct $PM_{2.5}$ and precursor pollutants (SO_2 and NO_X); (3) PSD and NNSR requirements of states to address condensable PM in establishing enforceable emission limits for PM_{10} or $PM_{2.5}$; (4) $PM_{2.5}$ emission offsets; and (5) optional interpollutant trading provision set forth at 40 CFR 51.165(a)(11).

These amendments to the Tennessee rules became state-effective June 27, 2011. Specifically, the rules included in the July 29, 2011, SIP revision establish that the State's existing NSR permitting program requirements for PSD and NNSR apply to the $PM_{2.5}$ NAAQS and its precursors; revise the definitions of ''*significant''* at 1200–03–09–.01(4)(b)24(i) and (5)((b)1(x)(I) to establish significant emission rates for direct $PM_{2.5}$ and $PM_{2.5}$ precursors for major modifications at existing sources (as amended at 40 CFR 51.165(a)(1)(x)(A) and 51.166(b)(23)(i)); revise the term ''*regulated NSR pollutant''* at 1200–03–09–.01(4)(b)47 and (5)(b)1(xlix) to include $PM_{2.5}$, recognize $PM_{2.5}$ precursors and include the requirement that condensable emissions be accounted for in applicability determinations and in establishing emissions limitations for PM (as amended at 40 CFR 51.165(a)(1)(xxxvii(C) and 51.166(b)(49); and adopt NNSR emission offsets (a ratio of 1:1) for direct $PM_{2.5}$ at 1200–03–09–.01(5)2(v) (as amended at 40 CFR 51.165(a)(9)). Additionally, Tennessee's SIP revision includes the interpollutant trading policy at rule 1200–03–09–.01(5)(b)2(v)(XV) (as amended at 40 CFR 51.165(a)(11)). These changes result in the Tennessee rules being equivalent to federal changes promulgated in the NSR $PM_{2.5}$ Rule.

EPA's May 18, 2011, final rulemaking repealed the PM_{10} ''grandfathering'' provision, as noted in Section II.C above. Tennessee's July 29, 2011, SIP revision does not include the grandfathering provision at 40 CFR 52.21(i)(1)(ix) promulgated in the NSR $PM_{2.5}$ Rule. Therefore, Tennessee's July 29, 2011, SIP submission is consistent with federal regulations.

Further, Tennessee's July 29, 2011, SIP revision adopts the elective interpollutant trading provision policy at 1200–03–09(5)(b)2.(v)(XV) set forth at 40 CFR 51.165(a)(11) for the purpose of offsets under the $PM_{2.5}$ NNSR program. However, the July 29, 2011, SIP revision does not adopt, into the Tennessee SIP, any trading ratios associated with the interpollutant trading policy established in the NSR $PM_{2.5}$ Rule. As set forth in EPA's July 21, 2011, Interpollutant Trading Memorandum, the preferred precursor offset ratios included in the preamble to the NSR $PM_{2.5}$ Rule are no longer considered presumptively approvable. Therefore any precursor offset ratio submitted, to EPA for approval, as part of the NSR SIP for a $PM_{2.5}$ nonattainment area must be accompanied by a technical demonstration showing the suitability of the ratios for that particular nonattainment area. Consequently, if a major stationary source or source with a major modification in Tennessee requests to obtain offsets through interpollutant trading, the State of Tennessee would first be required, consistent with the requirements of section 51.165(a)(11), to revise its SIP to adopt appropriate trading ratios. Tennessee would need to submit to EPA a technical demonstration showing how either the preferred ratios established in the NSR $PM_{2.5}$ Rule or the State's own ratios are appropriate for the state's particular $PM_{2.5}$ nonattainment as well as a revision to the NSR program adopting the ratios into the SIP. EPA would then have to approve the demonstration and ratios into the Tennessee SIP prior to any major stationary source or major modification obtaining offsets through the interpollutant trading policy.

EPA continues to support the basic policy that sources may offset increases in emissions of direct $PM_{2.5}$ or of any $PM_{2.5}$ precursor in a $PM_{2.5}$ nonattainment area with actual emissions reductions in direct $PM_{2.5}$ or $PM_{2.5}$ precursor, respectively, in accordance with offset ratios as approved in the SIP for the applicable nonattainment area. Tennessee's adoption of the interpollutant trading policy without trading ratios does not in any way allow a major stationary source or major modification in the state to obtain offsets through interpollutant trading, nor does it affect the approvability of Tennessee's July 29, 2010, SIP revision.

As mentioned above, Tennessee's July 29, 2011, SIP revision also adopts into the State's PSD regulations the requirement to address condensable PM in applicability determinations and in establishing enforceable emission limits in PSD and NNSR permits, as established in the NSR $PM_{2.5}$ Rule. As discussed in Section II.C.2, under a separate action, EPA has proposed to correct the inadvertent inclusion of ''particulate matter emissions'' in the definition of ''regulated NSR pollutant'' as an indicator for which condensable emissions must be addressed. *See* 77 FR

75656 (March 16, 2012). Further, on May 1, 2012, the State of Tennessee provided a letter to EPA with clarification of the State's intent in light of EPA's March 12, 2012, proposed rulemaking. Specifically, in that letter, the State of Tennessee requested that EPA not approve the term ''particulate matter emissions'' (at rule 1200–03–09–.01(4)(b)47(vi)) as part of the definition for ''regulated NSR pollutant'' regarding the inclusion of t condensable emissions in applicability determinations and in establishing emissions limitations for PM. Therefore given the State's request and EPA's intention to amend the definition of ''regulated NSR pollutant,'' EPA is not proposing action to approve the terminology ''particulate matter emissions'' into the Tennessee SIP (at 1200–03–09–.01(4)(b)47(vi)) for the condensable provision in the definition of ''regulated NSR pollutant.'' EPA is, however, proposing to approve into the Tennessee SIP at 1200–03–09–.01(4)(b)47(vi) the remaining condensable requirement at 40 CFR 51.166(b)(49)(vi), which requires that condensable emissions be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10}.

In addition to the adoption of the NSR $PM_{2.5}$ Rule mentioned above, TDEC's July 29, 2011, SIP revision makes an administrative change to Chapter 1200–03–09 for PSD and NNSR. On June 13, 2007, EPA took final action to revise the 2002 NSR Reform Rules [5] to remove from federal law all provisions pertaining to clean units and the pollution control projects exemption that were vacated by the United States Court of Appeals for the District of Columbia Rule. *New York* v. *United States,* 413 F.3d 3 (D.C. Cir. 2005). *See* 72 FR 32526. EPA's efforts to remove the vacated provisions included removing the following language from the hybrid test applicability provision at 40 CFR 51.166(a)(7)(iv)(f), 51.165(f)(6) and 52.21(a)(2)(iv)(f): ''For example, if a project involves both an existing emissions unit and a Clean Unit, the projected increase is determined by summing the values determined using the method specified in paragraph (a)(7)(iv)(c) of this section for the existing unit and determined using the method specified in paragraph (a)(7)(iv)(e) of this section for the Clean Unit.''

Tennessee's July 29, 2011, submission removes the above language from its hybrid test applicability provision at 1200–03–09–.01(4)(c)4(vi) and 1200–03–09–.01(5)(b)2(xvii) (PSD and NNSR regulations respectively) to be consistent with federal language amended in the June 13, 2007, final rulemaking regarding the vacated portions of the 2002 NSR Reform Rule. EPA is proposing to approve the NSR $PM_{2.5}$ requirements and administrative changes mentioned above into the Tennessee SIP because EPA has made the preliminary determination that this change is consistent with federal regulations and the CAA.

IV. Proposed Action

EPA is proposing to approve Tennessee's July 29, 2011, SIP revision, which includes rules that modify Tennessee's PSD and NNSR programs to adopt federal regulations amended in the NSR $PM_{2.5}$ Rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in consistent with the CAA and EPA regulations regarding NSR permitting.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 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, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 31, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–14106 Filed 6–8–12; 8:45 am]

BILLING CODE 6560–50–P

[5] On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 CFR parts 51 and 52 regarding the CAA's PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the ''2002 NSR Reform Rules.''

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0285; FRL–9684–3]

Approval and Promulgation of Implementation Plans; Tennessee; 110(a)(1) and (2) Infrastructure Requirements for the 1997 Annual and 2006 24-Hour Fine Particulate National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part, and conditionally approve in part, the State Implementation Plans (SIPs), submitted by the State of Tennessee, through the Tennessee