of potassium perchlorate in closure-sealing gaskets used for food containers. As noted, the basis for the proposed amendment is that the use of potassium perchlorate in closure-sealing gaskets for food containers has been permanently and completely abandoned. Accordingly, we request comments that address whether this use of potassium perchlorate has been completely abandoned, such as information on whether closure-sealing gaskets containing potassium perchlorate are currently being introduced or delivered for introduction into the U.S. market. We are not aware of information that suggests continued use of potassium perchlorate as a component of closure-sealing gaskets in contact with food.

We are providing the public with 60 days to submit comments. We anticipate that some interested persons may wish to provide FDA with certain information they consider to be trade secret or confidential commercial information (CCI) that would be exempt under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552). Interested persons may claim information that is submitted to FDA as CCI or trade secret by clearly marking both the document and the specific information as ''confidential.'' Information so marked will not be disclosed except in accordance with the Freedom of Information Act (5 U.S.C. 552) and our disclosure regulations (21 CFR part 20). For electronic submissions to *http://www.regulations.gov,* indicate in the ''comments'' box of the appropriate docket that your submission contains confidential information. Interested persons must also submit a copy of the comment that does not contain the information claimed as confidential for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice.

We are not requesting comments on the safety of the use of potassium perchlorate in closure-sealing gaskets for food containers because such information is not relevant to abandonment, which is the basis of the proposed action. We will not consider any comments addressing the safety of potassium perchlorate or containing safety information on this substance in our evaluation of this petition. In addition to our consideration of this petition, we are considering information on the safety of potassium perchlorate as an additive in closure-sealing gaskets for food containers as part of our consideration of a petition designated for reference as FAP 4B4808 (see 80 FR 13508 (March 16, 2015)). We have determined under 21 CFR 25.32(m) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 24, 2016.

Dennis M. Keefe,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2016–15474 Filed 6–29–16; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0221; FRL–9948–56–Region 6]

Approval and Promulgation of Implementation Plans; Oklahoma; Revisions to Major New Source Review Permitting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve severable portions of revisions to the Oklahoma New Source Review (NSR) State Implementation Plan (SIP) submitted by the State of Oklahoma on June 24, 2010; July 16, 2010; December 27, 2010; February 6, 2012; and January 18, 2013. These revisions update the Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NNSR) permit programs to be consistent with federal permitting requirements and make general updates to the Oklahoma SIP to support major NSR permitting. We are proposing this action under section 110, parts C and D of the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 1, 2016.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2014–0221, at *http://www.regulations.gov* or via email to *wiley.adina@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Adina Wiley, (214) 665–2115, *wiley.adina@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, (214) 665–2115, *wiley.adina@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Adina Wiley or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

A. The CAA and SIPs

The CAA at Section 110(a)(2)(C) requires states to develop and submit to the EPA for approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment/unclassifiable and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP 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 are designated as meeting the National Ambient Air Quality Standards (NAAQS), *i.e.,* ''attainment areas,'' as well as areas designated as ''unclassifiable'' because there is insufficient information to determine if the area meets the NAAQS. The NNSR SIP program is established in part D of title I of the CAA and applies in areas

that are designated as not being in attainment of the NAAQS, *i.e.,* ''nonattainment areas.'' The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source/major modification thresholds and thus do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located. Any submitted SIP revision must meet the applicable requirements for SIP elements in section 110 of the Act, and be consistent with all applicable statutory and regulatory requirements. The EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR Sections 51.160–51.166. Regulations specific to NNSR are contained in 40 CFR 51.165; PSD specific regulations are found in 40 CFR 51.166. The State of Oklahoma submitted revisions to the Oklahoma SIP related to its title I Major NSR permitting programs—PSD and NNSR. In addition to the specific revisions for Major NSR permitting, the State of Oklahoma also submitted revisions to the General Oklahoma SIP requirements that support major NSR permitting activities.

B. Overview of the Revisions to the General Provisions of the Oklahoma SIP

On July 16, 2010, the State of Oklahoma submitted revisions to the General Provisions in the Oklahoma SIP that had been adopted by the State and became effective from 2003–2012. Revisions submitted to the EPA for review included updates to the definitions and units, abbreviations, and acronyms used throughout the Oklahoma SIP; provisions establishing the ability to incorporate by reference federal requirements; revisions to the PSD increments regulated under the Oklahoma SIP; and updates to the Emission Inventory provisions.

C. Overview of the Revisions to the Oklahoma Major Source Permitting Programs

The State of Oklahoma submitted revisions to the Oklahoma PSD and NNSR Programs on June 24, 2010; July 16, 2010; February 6, 2012; and January 18, 2013. The revisions to the Oklahoma PSD and NNSR programs under review in this action have been submitted to address amendments that the EPA has made to the federal PSD and NNSR regulations as contained in the following final rules:

- NSR Reform Rule (67 FR 800186, December 31, 2002) and (68 FR 63021, November 7, 2003);
- Implementation of the 8-hour Ozone (O_3) NAAQS-Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to NSR and PSD as They Apply to Carbon Monoxide (CO), PM and O_3 NAAQS (70 FR 71612, November 29, 2005);
- PSD and NNSR: Reasonable Possibility in Recordkeeping (72 FR 72607, December 21, 2007);
- NSR $PM_{2.5}$ Implementation Rule (73 FR 28321, May 16, 2008);
- PSD for $PM_{2.5}$—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC) (75 FR 64864, October 20, 2010);
- GHG Tailoring Rule (75 FR 31514, June 3, 2010) (specific to PSD permitting only);
- PSD and NNSR: Reconsideration of Inclusion of Fugitive Rule (76 FR 17548, March 30, 2011).

D. Revisions Not Covered in This Proposed Action

Some severable provisions submitted by the State of Oklahoma on June 24, 2010; July 16, 2010; February 6, 2012; and January 18, 2013 are not addressed in today's action. In some instances, the EPA has taken separate actions to propose or finalize a decision on these severable provisions. For the remaining provisions, the EPA has severed the submitted provisions from today's rulemaking and will address them at a later date. The Technical Support Document accompanying our rulemaking identifies the provisions that we are not evaluating or proposing in this action.

II. The EPA's Evaluation

A. Evaluation of the Revisions to the General Provisions of the Oklahoma SIP

We have evaluated revisions to the General Provisions for the Oklahoma SIP submitted July 16, 2010; December 27, 2010; February 6, 2012; and January 18, 2013. These revisions, if approved by the EPA, would update the Oklahoma SIP to be consistent with current Oklahoma regulations and support the PSD and NNSR permitting programs in Oklahoma. We find that all of the revisions summarized below are consistent with federal requirements for SIP development under 40 CFR part 51; accordingly, we propose to approve the submitted rules as part of the Oklahoma SIP.

- The revisions to OAC 252:100–1–1, Purpose, and OAC 252:100–1–2, Definitions, effective June 12, 2003 and submitted on July 16, 2010, update the terms, phrases, and statutory definitions used throughout the Oklahoma SIP.
- The revisions to the General Definitions at OAC 252:100–1–3 effective on June 12, 2003; July 1, 2008; July 1, 2009; June 15, 2006; July 1, 2011; and July 1, 2012.[1] These revisions provide updates to maintain consistency with federal definitions in 40 CFR part 51 and remove obsolete or duplicative definitions.
- New provisions at OAC 252:100–1–4 effective on June 12, 2003; July 1, 2009; and July 1, 2011 that establish the units, abbreviations, and acronyms germane to the Oklahoma SIP.
- New provisions at OAC 252:100–2–1, 252:100–2–3, and Appendix Q effective July 1, 2012, to provide the authority to incorporate by reference (IBR) federal requirements and to specifically identify the requirements that are incorporated into the Oklahoma regulations and SIP. The EPA is only proposing to approve the IBR of the identified portions of 40 CFR parts 50 and 51. All remaining portions of Appendix Q as submitted July 16, 2010 and January 18, 2013, were returned to the ODEQ by letters dated March 4, 2016 and May 16, 2016, respectively.
- Revisions to OAC 252:100–3–4 effective June 15, 2005 and July 1, 2011, to maintain consistency with federal requirements and adopt and implement the PSD $PM_{2.5}$ increments promulgated by the EPA on October 20, 2010.
- New OAC 252:100, Appendix P—Regulated Air Pollutants, effective June 15, 2007, to identify the pollutants regulated under the CAA and EPA regulations.
- Revisions to the regulations at OAC 252:100, Subchapter 5—Registration, Emission Inventory, and Annual Operating Fees on July 16, 2010. These amendments, update the Subchapter 5 Definitions at OAC 252:100–5–1.1 to remove obsolete definitions and promote clarity and revise the Emission Inventory provisions at OAC 252:100–5–1.2 to include non-substantive edits to promote clarity to state Emission Inventory practices.[2]

B. Evaluation of the Revisions to the Oklahoma Major NSR Permitting Programs

We evaluated amendments to the Oklahoma PSD and NNSR programs submitted on June 24, 2010; July 16, 2010, February 6, 2012, and January 18, 2013. These submitted revisions update

[1] On January 18, 2013, Oklahoma submitted a revision to the definition of ''carbon dioxide equivalent'' at OAC 252:100–1–3, effective July 1, 2012. The EPA separately proposed disapproval of this provision on January 11, 2016. *See* 81 FR 1141.

[2] The revision to OAC 252:100–5–2.1(a)(3) effective June 11, 2014 and submitted July 16, 2010, was withdrawn by the Oklahoma Secretary of Energy and Environment on January 28, 2015. As such, this provision is no longer before us for review.

the general requirements for Oklahoma Major NSR Permitting Programs, and provide specific updates to the Oklahoma PSD and NNSR Permitting Programs at OAC 252:100–8–1.1, 8–30, 8–31, 8–32, 8–32.1, 8–32.2, 8–32.2, 8–33, 8–34, 8–35, 8–35.1, 8–35.2, 8–36, 8–36.2, 8–37, 8–38, 8–39, 8–50, 8–50.1, 8–51, 8–51.1, 8–52, 8–53, 8–54, 8–54.1, 8–55, 8–56, and 8–57.[3] These amendments, if approved by the EPA, would update the PSD and NNSR programs to be consistent with federal permitting requirements and provide clarity to the existing SIP-approved rules. The EPA's evaluation of the Oklahoma SIP submittals includes an analysis of how the Oklahoma regulations comport with the federal permitting requirements. We find that in most cases, the state regulatory language is identical to that of the federal rule. Where the regulatory language is not identical, we find it is consistent with the intent of the federal rules and definitions. The EPA is therefore proposing to approve the submitted rules as part of the Oklahoma PSD and NNSR SIP.

1. NSR Reform Rule

The EPA promulgated its NSR Reform Program rules on December 31, 2002 (67 FR 80186). On November 7, 2003 (68 FR 63021), the EPA promulgated a final action on its reconsideration of the December 31, 2002, NSR Reform Program rules. Our evaluation of the Oklahoma SIP submittals demonstrates the ODEQ has adopted and submitted revisions to the PSD and NNSR permitting programs that are sufficient for the ODEQ to implement the required elements of NSR Reform.

The rule revisions effective June 15, 2006, submitted as a revision to the Oklahoma SIP on July 16, 2010, include revisions to OAC 252:100 Part 7—Prevention of Significant (PSD) Requirements for Attainment Areas. The submission covers Applicability, PSD requirements, Actuals PALs, and Definitions that implement the NSR Reform revisions to PSD. To be approvable under the SIP, states implementing Part C (PSD permit program in 40 CFR 51.166) must include the EPA's December 31, 2002, changes as minimum PSD program elements. The following summary demonstrates the revisions to the Oklahoma PSD program satisfy the federal PSD program requirements:

- Incorporation of a new method for determining baseline actual emissions; defined in OAC 252:100–8–30 and OAC 252:100–8–31;
- Incorporation of the actual-to-projected-actual methodology for determining whether a major modification has occurred; found in OAC 252:100–8–30; and
- Inclusion of rules that allow major stationary sources to comply with Plantwide Applicability Limits (PALs) to avoid having a significant emissions increase that triggers the requirements of the major NSR program; found OAC 252:100–8–38.

The rule revisions effective June 15, 2006, submitted as a revision to the Oklahoma SIP on July 16, 2010, also include revisions to OAC 252:100 Part 9—Major Sources Affecting Nonattainment Areas. The submission covers Applicability, NNSR requirements, Actuals PALs, and Definitions that implement the NSR Reform revisions to NNSR. To be approvable under the SIP, states implementing Part D (NNSR permit program in 40 CFR 51.165) must include the EPA's December 31, 2002, changes as minimum NNSR program elements. The following summary demonstrates that the revisions to the Oklahoma NNSR program satisfy the federal NNSR program requirements.

- Incorporation of a new method for determining baseline actual emissions; defined in OAC 252:100–8–50 and OAC 252:100–8–51;
- Incorporation of the actual-to-projected-actual methodology for determining whether a major modification has occurred; found in OAC 252:100–8–50; and
- Inclusion of rules that allow major stationary sources to comply with Plantwide Applicability Limits (PALs) to avoid having a significant emissions increase that triggers the requirements of the major NSR program; found OAC 252:100–8–56.

2. Final Rule To Implement the 8-Hour Ozone (O_3) NAAQS—Phase 2 and Certain Aspects of the 1990 Amendments Relating to NSR and PSD as They Apply to Carbon Monoxide (CO), PM and O_3 NAAQS (O_3 NAAQS Implementation Rule)

The EPA finalized the O_3 NAAQS Implementation Rule to provide additional regulatory requirements under the PSD and NNSR SIP programs regarding the implementation of the 8-hour ozone NAAQS. *See* 70 FR 71612, November 29, 2005. Regarding NSR, this rule is based on the proposed rule published on June 2, 2003 to implement the 8-hour O_3 NAAQS, as well as the proposed rule published on July 23, 1996 for PSD and NNSR. *See* 68 FR 32802 and 61 FR 38305, respectively. These changes provide a consistent national program for permitting major stationary sources under section 110(a)(2)(C) and parts C and D of title I of the CAA, including major stationary sources of any ozone precursor in ozone nonattainment areas.

The revisions to the Oklahoma PSD Program address the required elements of the EPA's final 8-hour ozone NAAQS Phase 2 rule as follows:

- The Oklahoma PSD program contains a revised definition of ''major stationary source'' at OAC 252:100–8–31, which specifies that a major source that is major for VOC or NO_X is considered major for ozone.
- The Oklahoma PSD program contains a revised definition of ''major modification'' at OAC 252:100–8–31, which specifies that any significant increase or net emissions increase at a major stationary source that is significant for VOC or NO_X shall be considered significant for ozone.
- The Oklahoma PSD program contains a revised definition of ''significant'' at OAC 252:100–8–31, which specifies that the SER for ozone is 40 TPY of VOC or NO_X.
- The Oklahoma PSD program contains a revised definition of ''regulated NSR pollutant'' at OAC 252:100–8–31, which specifies that VOC and NO_X are precursors to ozone and thus regulated pollutants.
- The Oklahoma PSD program contains a revised exemption from PSD monitoring at OAC 252:100–8–33(c)(1)(F), which specifies that no de minimis air quality level is provided for ozone.

The EPA's final 8-hour ozone NAAQS Phase 2 Rule also codified requirements added to part D of Title I of the CAA in the 1990 Amendments related to permitting of major stationary sources in areas that are nonattainment for the O_3, PM, and CO NAAQS. Second, the EPA revised the criteria for crediting emissions reductions credits from shutdowns and curtailments as offsets. Third, revisions to the regulations for permitting of major stationary sources in nonattainment areas in interim periods between designation of new nonattainment areas and the EPA's approval of a revised SIP. Fourth, the EPA changed the regulations that impose a ban prohibiting construction of new or modified major stationary sources in nonattainment area where the State fails to have an implementation plan meeting all of the requirements of part D. The revisions to the Oklahoma NNSR Program address the required

[3] As identified in the TSD, the EPA is taking no action at this time on the submitted revisions to OAC 252:100–8–2, 8–4, 8–5, 8–6, 8–6.1, 8–6.3, 8–7, 8–7.2, 8–8, and 8–36.1.

elements of the EPA's final 8-hour Ozone NAAQS Phase 2 rule as follows:

- The Oklahoma NNSR program at OAC 252:100–8–51 incorporates by reference the federal NNSR definition of ''major stationary source'' at 40 CFR 51.165(a)(1)(iv) as of July 1, 2010.
- The definition of ''major modification'' at OAC 252:100–8–51 was revised by adding a new paragraph (C) and new OAC 252:100–8–54.1(a) together requiring NO_X to be regulated as an ozone precursor in an ozone nonattainment area consistent with the federal requirements at 40 CFR 51.165(a)(1)(v) and (a)(3)(8).
- The Oklahoma NNSR program at OAC 252:100–8–51 incorporates by reference the federal NNSR definition of ''significant'' at 40 CFR 51.165(a)(1)(x) as of July 1, 2010.
- New OAC 252:100–8–51.1(b) incorporates by reference the emission offset requirements in 40 CFR 51.165(a)(9) as of July 2, 2007.
- New OAC 252:100–8–54.1(b) makes the PM_{10} requirements apply to the PM_{10} precursors consistent with the requirements at 40 CFR 51.165(a)(10).

3. PSD and NNSR: Reasonable Possibility in Recordkeeping Rulemaking

The EPA finalized PSD and NNSR: Reasonable Possibility in Recordkeeping on December 21, 2007. *See* 72 FR 72607. This rule clarifies the ''reasonable possibility'' recordkeeping and reporting standards of our 2002 NSR Reform rules. The ''reasonable possibility'' standard identifies for sources and reviewing authorities the criteria under which an owner or operator of a major stationary source undergoing a physical change or change in the method of operation that does not trigger major NSR permitting requirements for a given regulated NSR pollutant must keep records. The standard also specifies when the recordkeeping and reporting requirements apply to such sources.

The Oklahoma PSD program does not include the reasonable possibility provisions as promulgated by EPA at 40 CFR 51.166(r)(6)(vi). Instead, in the Oklahoma PSD program, any source using the ''projected actual emissions'' methodology is required to comply with the recordkeeping requirements at 40 CFR 51.166(r)(6)(i)–(v). Similarly, the revisions to the Oklahoma NNSR program effective June 15, 2006, submitted July 16, 2010, incorporate by reference as of January 2, 2006, the requirements in 40 CFR 51.165(a)(6)(i) through (a)(6)(v), and do not include the reasonable possibility provisions promulgated at 40 CFR 51.165(a)(6)(vi).

The Oklahoma Department of Environmental Quality submitted a letter of interpretation on February 8, 2016, that explained how the Oklahoma PSD program applies the recordkeeping, monitoring and reporting requirements consistent with 40 CFR 51.166(r)(6)(i)–(v) to all sources that use the ''projected actual emissions'' methodology; not just a subset of sources for which there is a ''reasonable possibility'' that a project would result in a significant emissions increase of a regulated NSR pollutant. These requirements apply to *any* source using the ''projected actual emissions'' methodology. Therefore, the EPA believes that the Oklahoma SIP does not need to include the reasonable possibility provisions at 40 CFR 51.166(r)(6)(vi). This requirement for all sources to maintain records, monitor emissions and report in accordance with 40 CFR 51.166(r)(6)(i)–(v) is more stringent than federal requirements and is therefore approvable. While the February 8, 2016, letter is specific to the Oklahoma PSD program and the requirements at OAC 252:100–8–36.2, we find that the Oklahoma NNSR program is structured similarly and the same conclusion would apply. Any source using the ''projected actual emissions'' methodology is required to meet the recordkeeping and reporting requirements consistent with 40 CFR 51.165(a)(6)(i)–(v). Therefore, the Oklahoma SIP does not need to include the reasonable possibility provisions at 40 CFR 51.165(a)(6)(vi).

4. Revisions to the PSD and NNSR Programs for $PM_{2.5}$ Implementation

The EPA promulgated two rules establishing both required and optional implementation elements for PSD and NNSR permitting programs for $PM_{2.5}$: the May 16, 2008 final rule for Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$) (referred to as the NSR $PM_{2.5}$ Implementation Rule), 73 FR 28321; and the October 20, 2010 final rule for Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC) (referred to as the $PM_{2.5}$ PSD Increments—SILs—SMC Rule), 75 FR 64864. Both the NSR $PM_{2.5}$ Implementation Rule and the $PM_{2.5}$ PSD Increments—SILs—SMC Rule have also been the subject of litigation. Following is a discussion of how the Oklahoma PSD and NNSR programs satisfy the required elements of these two rulemakings and address the concerns raised in the subsequent litigation.

a. NSR $PM_{2.5}$ Implementation Rule

Our evaluation of the February 6, 2012, revisions to the Oklahoma PSD permitting program presented below and in our accompanying TSD, demonstrates that the Oklahoma PSD program includes all of the PSD required elements of the NSR $PM_{2.5}$ Implementation Rule.

- Regulation of Direct $PM_{2.5}$ and Precursors: The revised definition of ''regulated NSR pollutant'' at OAC 252:100–8–31 is consistent with the federal definition of ''regulated NSR pollutant'' at 40 CFR 51.166(b)(49) and identifies precursors to $PM_{2.5}$ in attainment areas. With respect to $PM_{2.5}$, the revised definition of ''regulated pollutant'' at OAC 252:100–8–31 identifies sulfur dioxide and nitrogen oxides as regulated $PM_{2.5}$ precursors while volatile organic compounds (VOCs) are not regulated $PM_{2.5}$ precursors in $PM_{2.5}$ attainment areas in Oklahoma.
- Establish SERs: The revisions to the PSD definition of ''significant'' at OAC 252:100–8–31 establishes significant emission rates for direct $PM_{2.5}$ and for NO_X and SO_2 and $PM_{2.5}$ precursors.
- Condensable PM_{10}/$PM_{2.5}$ Emissions: The revised definition of ''regulated NSR pollutant'' at OAC 252:100–8–31 is consistent with the federal requirements promulgated on May 16, 2008 at 40 CFR 51.166(b)(49)(vi). Note that the EPA subsequently promulgated a correction to the definition of ''regulated NSR pollutant'' with regard to the way in which condensable particulate matter is to be addressed with regard to emissions of PM at 40 CFR 51.166(b)(49)(i)(*a*). The correction clarified that permit applicants are not required to consider the condensable portion of particulate matter in applicability determinations and in establishing emission limitations concerning ''PM emissions,'' a term that represents a size range or indicator of particulate matter not considered to be a criteria pollutant. *See* 77 FR 65107, October 25, 2012. Although the ODEQ revisions do not reflect this amendment of the federal condensable provision, the State's revision to the PSD program to address condensable emissions is nonetheless approvable as it is more stringent than the current federal requirements for regulating condensibles as modified by the EPA in the October 25, 2012 final rule.

Based on the analysis presented below and in our accompanying TSD, the EPA is also proposing to find that the February 6, 2012, revision to the Oklahoma NNSR permitting program includes all of the NNSR requirements

of the NSR $PM_{2.5}$ Implementation Rule for the following reasons:

- Regulation of Direct $PM_{2.5}$ and Precursors: The revised definition of ''regulated NSR pollutant'' at OAC 252:100–8–51 is consistent with the federal definition of ''regulated NSR pollutant'' at 40 CFR 51.165(a)(1)(xxxvii) and identifies precursors to $PM_{2.5}$ in nonattainment areas. With respect to $PM_{2.5}$, the revised definition of ''regulated pollutant'' at OAC 252:100–8–51 identifies sulfur dioxide and nitrogen oxides as regulated $PM_{2.5}$ precursors while volatile organic compounds (VOCs) and ammonia are not regulated $PM_{2.5}$ precursors in $PM_{2.5}$ nonattainment areas in Oklahoma. We note there are currently no $PM_{2.5}$ nonattainment areas in Oklahoma.

- Establish SERs: The February 6, 2012, submittal incorporates by reference the definition of ''significant'' at 40 CFR 51.165(a)(1) as it exists on July 1, 2011, and will therefore include significant emission rates for direct $PM_{2.5}$ and for sulfur dioxide and nitrogen oxides as $PM_{2.5}$ precursors as promulgated by the EPA at 40 CFR 51.165(a)(1)(xxxvii)(C) and (D) on May 16, 2008.

- Condensable $PM_{10}/PM_{2.5}$ Emissions: The revised definition of ''regulated NSR pollutant'' at OAC 252:100–8–51 is consistent with the federal requirements promulgated on May 16, 2008 at 40 CFR 51.165(a)(1)(xxxvii).

b. The EPA's Analysis of the Revisions to the Oklahoma PSD and NNSR Permitting Program Submittal in Light of the Litigation on the May 16, 2008 NSR $PM_{2.5}$ Implementation Rule

On January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *EPA* [4] issued a decision that remanded the EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. With respect to the requirements for implementation of the $PM_{2.5}$ NAAQS in nonattainment areas, the Court found that the EPA erred in implementing the $PM_{2.5}$ NAAQS in these rules solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than pursuant to the additional implementation provisions specific to particulate matter nonattainment areas in subpart 4. The Court ordered the EPA to ''repromulgate'' these rules pursuant to subpart 4 consistent with this opinion.'' *Id.* at 437. Subpart 4 of Part D, Title I of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 $PM_{2.5}$ NSR Implementation Rule addressed by the *NRDC* decision promulgated NSR requirements for implementation of $PM_{2.5}$ in both nonattainment areas (NNSR) and attainment/unclassifiable areas (PSD).[5] As the requirements of subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 rule that address requirements for $PM_{2.5}$ in attainment and unclassifiable areas to be affected by the court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 NSR $PM_{2.5}$ Implementation Rule in order to comply with the court's decision. Accordingly, the EPA's proposed approval of revisions to the Oklahoma SIP with respect to the PSD requirements promulgated by the 2008 NSR $PM_{2.5}$ Implementation Rule does not conflict with the court's opinion.

With respect to the nonattainment area requirements in affected rules, including the NNSR requirements of the 2008 $PM_{2.5}$ NSR Implementation Rule, on June 2, 2014, the EPA published a final rulemaking that begins to address the remand of both rules. *See* 79 FR 31566. The final rule classifies all existing 1997 and 2006 $PM_{2.5}$ NAAQS nonattainment areas as ''Moderate'' nonattainment areas and sets a deadline of December 31, 2014, for states to submit any SIP submissions, including nonattainment NSR SIPs, that may be necessary to satisfy the requirements of subpart 4, part D, title I of the CAA with respect to those 1997 and 2006 $PM_{2.5}$ NAAQS nonattainment areas.

In a separate rulemaking process that will follow the April 2014 rule, the EPA is evaluating the requirements of subpart 4 as they pertain to, among other things, nonattainment NSR for $PM_{2.5}$ emissions. In particular, subpart 4 includes section 189(e) of the CAA, which requires the control of major stationary sources of PM_{10} precursors ''except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the standard in the area.'' Under the court's decision in *NRDC,* section 189(e) of the CAA also applies to $PM_{2.5}$.

Notably, Oklahoma does not have any areas designated as nonattainment under either the 1997 or the 2006 $PM_{2.5}$ NAAQS. The obligation for a state to submit a plan addressing $PM_{2.5}$ nonattainment NSR permitting requirements under CAA section 189(a)(1)–(2) only attaches when an area within a state has been designated nonattainment. Accordingly, Oklahoma is not required at this time to make any submissions addressing $PM_{2.5}$ nonattainment NSR permitting. The December 31, 2014, deadline for states to make any additional submission necessary to address the requirements of subpart 4 as to the 1997 and 2006 $PM_{2.5}$ NAAQS, including addressing the regulation of $PM_{2.5}$ precursors pursuant to section 189(e), does not apply to Oklahoma.

Nonetheless, as discussed above in our evaluation of the NNSR Definitions at OAC 252:100–8–51, the State of Oklahoma submitted a revision to the Oklahoma SIP on February 6, 2012, which included revisions to definitions in the Oklahoma NNSR Permitting Program to address $PM_{2.5}$. The revised definition of ''regulated NSR pollutant'' at OAC 252:100–8–51 is consistent with the federal definition of ''regulated NSR pollutant'' at 40 CFR 51.165(a)(1)(xxxvii) and identifies precursors to $PM_{2.5}$ in nonattainment areas. With respect to $PM_{2.5}$, the revised definition of ''regulated pollutant'' at OAC 252:100–8–51 identifies sulfur dioxide and nitrogen oxides as regulated $PM_{2.5}$ precursors while volatile organic compounds (VOCs) and ammonia are not regulated $PM_{2.5}$ precursors in $PM_{2.5}$ nonattainment areas in Oklahoma. The February 6, 2012, submittal incorporates by reference the definition of ''significant'' at 40 CFR 51.165(a)(1) as it exists on July 1, 2011, and will therefore include significant emission rates for direct $PM_{2.5}$ and for sulfur dioxide and nitrogen oxides as $PM_{2.5}$ precursors. These revisions, although consistent with the 2008 NSR Rule as developed consistent with subpart 1 of the Act, may not contain the elements necessary to satisfy the CAA requirements when evaluated under the subpart 4 statutory requirements in the event an area in Oklahoma is designated nonattainment in the future. In particular, Oklahoma's submission does not include regulation of VOCs and ammonia as $PM_{2.5}$ precursors, nor does it include a demonstration consistent with section 189(e) showing that major sources of those precursor pollutants would not contribute significantly to $PM_{2.5}$ levels exceeding the standard in the area. For these reasons, the EPA cannot conclude at this time that this part of the Oklahoma NNSR submission satisfies all of the requirements of subpart 4 as they pertain to $PM_{2.5}$ NNSR permitting. However, because $PM_{2.5}$

[4] 706 F.3d 428 (D.C. Cir. 2013).

[5] The 2007 implementation rule also addressed by the *NRDC* decision does not address any NSR requirements and is therefore not addressed by this rulemaking.

levels in Oklahoma do not currently exceed the standard, it is not necessary for the Oklahoma NNSR SIP at this time to fully address the requirements under CAA section 189. In the event that an area is designated nonattainment for the 2012 $PM_{2.5}$ NAAQS or any other future $PM_{2.5}$ NAAQS, Oklahoma will have a deadline under section 189(a)(2) of the CAA to make a submission addressing the statutory requirements as to that area, including the requirements in section 189(e) that apply to the regulation of $PM_{2.5}$ precursors.

The revisions to Oklahoma's NNSR rule are not required by the statute at this time, nor do the revisions contain all of the necessary elements to satisfy the CAA requirements when evaluated under the subpart 4 provisions; however, the revisions represent an enhancement of the currently SIP-approved Oklahoma NNSR Permitting Program, which does not address $PM_{2.5}$ or its precursors at all. For these reasons, the EPA is proposing to approve the NNSR revisions at OAC 252:100–8–51 as submitted on February 6, 2012. We note that only SO_2 and NO_X will be regulated as $PM_{2.5}$ precursors under the Oklahoma NNSR program.

c. PSD for $PM_{2.5}$—Increments, SILs, and SMC Rule

The EPA finalized the PSD for $PM_{2.5}$—Increments, SILs and SMC Rule to provide additional regulatory requirements under the PSD SIP program regarding the implementation of the $PM_{2.5}$ NAAQS. *See* 75 FR 64864. The PSD for $PM_{2.5}$—Increments, SILs and SMC Rule required states to submit SIP revisions to EPA by July 20, 2012, adopting provisions equivalent to or at least as stringent as the $PM_{2.5}$ PSD increments and the associated implementing regulations promulgated pursuant to section 166(a) of the CAA. More detail on the PSD for $PM_{2.5}$—Increments, SILs and SMC Rule can be found in the EPA's October 20, 2010 final rule. *See* 75 FR 64864.

With respect to the requirement that revisions to the PSD program must include the increment component of the PSD for $PM_{2.5}$—Increments, SILs and SMC Rule, the ODEQ has adopted the required $PM_{2.5}$ increments at OAC 252:100–3–4 that are at least as stringent as those promulgated by the EPA on October 20, 2011. The ODEQ further adopted revisions to definitions of ''baseline area,'' ''major source baseline date,'' and ''minor source baseline date'' at OAC 252:100–8–31 that are required for the implementation of the $PM_{2.5}$ increment at least as stringent as regulations promulgated by the EPA on October 20, 2011. The ODEQ also correctly updated the source impact analysis requirements at OAC 252:100–8–35(a)(1) and the provisions for sources impacting Class I areas at OAC 252:100–8–36 consistent with the requirements at 40 CFR 51.166(k)(1) and 40 CFR 51.166(p), respectively, promulgated by the EPA on October 20, 2011. The EPA is proposing to find that the Oklahoma PSD program and the Oklahoma SIP now includes the required $PM_{2.5}$ increments and associated implementing regulations, and these provisions are applicable requirements for sources and modifications that are major for $PM_{2.5}$ and/or the identified precursors of SO_2 and NO_X.

With respect to the NNSR Program, the October 20, 2010 final rule also codified the $PM_{2.5}$ SILs in the EPA's regulations on new source review and permitting requirements at 40 CFR 51.165(b)(2). Unlike the PSD regulations (40 CFR 51.166 and 40 CFR 52.21), 40 CFR 51.165(b)(2) does not use the SILs to exempt a source from conducting cumulative air quality analysis. Instead, 40 CFR 51.165(b)(2) states that a proposed source or modification will be considered to cause a violation of a NAAQS when that source or modification would, at a minimum exceed the SIL in any area that does not or would not meet the applicable NAAQS. The revisions at OAC 252:100–8–52(a) incorporate by reference the federal requirements for SILs at 40 CFR 51.165(b)(2) as of December 20, 2010.

d. The EPA's Analysis of the Revisions to the Oklahoma PSD Program in Light of the Litigation on the October 20, 2010 PSD for $PM_{2.5}$—Increments, SILs and SMC Rule

The EPA's October 20, 2010 PSD for $PM_{2.5}$—Increments, SILs and SMC Rule also provided that states could discretionarily choose to adopt and submit for EPA approval $PM_{2.5}$ SILs, used as a screening tool to evaluate the impact a proposed new major source or major modification may have on the NAAQS or PSD increment, and/or a $PM_{2.5}$ SMC (also a screening tool) to determine the subsequent level of ambient air monitoring data gathering required for a PSD permit application for emissions of $PM_{2.5}$.

On January 22, 2013, the U.S. Court of Appeals for the District of Columbia granted a request from the EPA to vacate and remand to the EPA portions of the federal PSD regulations (40 CFR 51.166(k)(2) and 52.21(k)(2)) setting forth provisions for implementing SILs for $PM_{2.5}$ so that the EPA could reconcile the inconsistency between the regulatory text and certain statements in the preamble to the 2010 final rule. *Sierra Club* v. *EPA,* 705 F.3d 458, 463–64 (D.C. Cir. 2013). The court declined to vacate the different portions of the federal PSD regulations (40 CFR 51.165(b)(2)) for implementing SILs for $PM_{2.5}$ that did not contain the same inconsistency in the regulatory text. *Id.* at 465–66. The court further vacated the portions of the PSD regulations (40 CFR 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*)) implementing a $PM_{2.5}$ SMC, finding that the EPA lacked legal authority to adopt and use the $PM_{2.5}$ SMC to exempt permit applicants from the statutory requirement to compile and submit ambient monitoring data. *Id.* at 468–69. On December 9, 2013, the EPA issued a good cause final rule formally removing the affected PSD SILs and SMC provisions from the CFR. *See* 78 FR 73698.

Oklahoma has adopted and submitted provisions to establish the $PM_{2.5}$ SIL at OAC 252:100–8–35(a)(2) and the $PM_{2.5}$ SMC at OAC 252:100–8–33(c)(1)(C) in the Oklahoma PSD program. The EPA is severing these discretionary provisions from this action; we will address these submitted provisions in a separate action at a later date.

The court ruling and the EPA's subsequent good cause final rulemaking only addressed the PSD revisions of the October 20, 2010, final rule; therefore there will be no impact on the submitted revisions to the Oklahoma NNSR program.

5. EPA's GHG Tailoring Rule

On June 3, 2010, the EPA published a final rule, known as the Tailoring Rule, which phased in permitting requirements for greenhouse gas (GHG) emissions from stationary sources under the CAA PSD and title V permitting programs (75 FR 31514). Under its interpretation of the CAA at the time, the EPA believed the Tailoring Rule was necessary to avoid a sudden and unmanageable increase in the number of sources that would be required to obtain PSD and title V permits under the CAA because the sources emitted or had the potential to emit GHGs above the applicable major source and major modification thresholds.

In Step 1 of the Tailoring Rule, which began on January 2, 2011, the EPA limited application of PSD and title V requirements for GHGs to sources that were subject to PSD or title V ''anyway'' due to their emissions of non-GHG pollutants. These sources are referred to as ''anyway sources.'' In Step 2 of the Tailoring Rule, which began on July 1, 2011, the EPA applied the PSD and title V permitting requirements under the CAA to sources that were classified as

major, and, thus, required to obtain a permit, based solely on their GHG emissions or potential to emit GHGs, and to modifications of major sources that required a PSD permit because they increased only GHG emissions above the threshold level in the EPA regulations. On June 23, 2014, the U.S. Supreme Court issued a decision in *Utility Air Regulatory Group (UARG)* v. *EPA*, 134 S. Ct. 2427, addressing the application of stationary source permitting requirements to GHGs. The U.S. Supreme Court held that the EPA may not treat GHGs as an air pollutant for the specific purpose of determining whether a source is a major source (or a modification thereof) and thus required to obtain a PSD or title V permit. With respect to PSD, the ruling effectively upheld the PSD permitting requirements for GHG emissions under Step 1 of the Tailoring Rule for ''anyway sources,'' and invalidated the PSD permitting requirements for Step 2 sources. Because the Supreme Court decision affirmed in part and reversed in part an earlier decision of the D.C. Circuit in *Coalition for Responsible Regulation* v. *EPA,* 684 F.3d 102 (D.C. Cir. 2012), on April 10, 2015, the D.C. Circuit issued an Amended Judgment (Nos. 09–1322, 10–073, 10–1092 and 10–1167), which reflects the *UARG* v. *EPA* Supreme Court decision. The D.C. Circuit simultaneously issued its mandate, which means that the *Coalition* Amended Judgment became final and effective upon issuance. In the *Coalition* Amended Judgment, the D.C. Circuit ordered that the EPA regulations under review (including 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v)) be vacated to the extent they require a stationary source to obtain a PSD permit if GHGs are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emissions increase from a modification. The D.C. Circuit also ordered that the regulations under review be vacated to the extent they require a stationary source to obtain a title V permit solely because the source emits or has the potential to emit GHGs above the applicable major source thresholds, and that the EPA consider further phasing in the GHG permitting requirements at lower GHG emission thresholds (in particular 40 CFR 52.22 and 40 CFR 70.12, 71.13).

In response to the *Coalition* Amended Judgment, the EPA promulgated a good cause final rule on August 19, 2015, removing the PSD permitting provisions for Step 2, non-anyway sources from the federal regulations at 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v). The EPA no longer has the authority to regulate Step 2, non-anyway sources, nor can we approve provisions in a state regulation providing this authority. We anticipate future federal rulemakings to address the remainder of the UARG and Coalition judgments. We further anticipate that these federal rulemaking actions will necessitate revisions to the existing PSD regulations in SIP-approved states.

The ODEQ submitted revisions to the Oklahoma SIP addressing the regulation and permitting of GHGs on February 6, 2012 and January 18, 2013. The EPA finds that the provisions for Step 1 permitting submitted on February 6, 2012, at OAC 252:100–8–31, definition of ''subject to regulation,'' subparagraphs (A), (B), (C), (D), and (F) are consistent with federal requirements for Step 1 GHG Permitting at 40 CFR 51.166(b)(48). Additionally, the February 6, 2012 submittal included revisions to the general definitions at OAC 252:100–1–3 to include new definitions for CO_2e and GHG consistent with the federal PSD definitions at 40 CFR 51.166(b)(48)(ii)(*a*) and 51.166(b)(48)(i), respectively.

On May 23, 2016, the EPA promulgated our final disapproval of the provisions for Step 2 permitting submitted on February 6, 2012 and the revisions submitted on January 18, 2013 to implement the GHG Biomass Deferral. *See* 81 FR 32239.

a. EPA's Analysis of the Approvability of the Oklahoma PSD Automatic Rescission Provisions for GHGs

Oklahoma's February 6, 2012, SIP submittal adds automatic rescission provisions to the State's PSD regulations at OAC 252:8–100–36.2, definition of ''subject to regulation,'' subparagraph (F). The automatic rescission provisions provide that in the event that federal legislation or a federal court determines that a portion of the EPA's tailoring rule, endangerment finding, or light-duty vehicle GHG standard is unenforceable, that provision will be enforceable in the Oklahoma PSD program only to the extent that it is enforceable by the EPA.

The EPA is proposing to approve the Oklahoma automatic rescission provisions. In assessing the approvability of this severability provision, the EPA considers two key factors: (1) Whether the public will be given reasonable notice of any change to the SIP that occurs as a result of the automatic rescission provisions, and (2) whether any future change to the SIP that occurs as a result of the automatic rescission provisions would be consistent with the EPA's interpretation of the effect of the triggering action on federal GHG permitting requirements. *See e.g.,* 79 FR 8130 (February 11, 2014) and 77 FR 12484 (March 1, 2012). These criteria are derived from the SIP revision procedures set forth in the CAA and federal regulations.

Regarding public notice, CAA section 110(l) provides that any revision to a SIP submitted by a State to EPA for approval ''shall be adopted by such State after reasonable notice and public hearing.'' In accordance with CAA section 110(l), ODEQ followed applicable notice-and-comment procedures prior to adopting the automatic rescission provisions. Thus, the public is on notice that the automatic rescission provisions in the Oklahoma PSD program will enable the Oklahoma PSD program and the Oklahoma SIP to update automatically to reflect any order by a federal court or any change in federal law that limits or renders ineffective the regulation of GHGs under the CAA's PSD permitting program. In a letter dated April 22, 2016, the ODEQ has stated that it would provide notice to the general public and regulated community of the changes to the Oklahoma PSD program in the event of any change in the federal permitting requirements for GHGs.

The EPA's consideration of whether any SIP change resulting from Oklahoma's automatic rescission provisions would be consistent with our interpretation of the effect of the triggering action on federal GHG permitting requirements is based on 40 CFR 51.105, which states that ''[r]evisions of a plan, or any portion thereof, will not be considered part of an applicable plan until such revisions have been approved by the Administrator in accordance with this part.'' To be consistent with 40 CFR 51.105, any automatic SIP change resulting from a court order or federal law change must be consistent with the EPA's interpretation of the effect of such order or federal law change on GHG permitting requirements. We interpret this provision to mean that Oklahoma will wait for and follow the EPA's interpretation as to the impact of any federal law change or the D.C. Circuit or the U.S. Supreme Court issues an order before Oklahoma's SIP would be changed. In the event of a court decision or federal law change that triggers (or likely triggers) application of Oklahoma's automatic rescission provisions, the EPA intends to promptly describe the impact of the court decision or federal law change on the enforceability of its GHG permitting regulations. The EPA invites comment,

particularly from the State, regarding this interpretation.

6. PSD and NNSR: Reconsideration of Inclusion of Fugitive Rule and Subsequent EPA-Stays

On December 19, 2008, the EPA issued a final rule revising the requirements of PSD and NNSR program regarding the treatment of fugitive emissions (Fugitive Emissions Rule, 73 FR 77882). The Fugitive Emissions Rule required fugitive emissions to be included in determining whether a physical or operational change results in a major modification only for sources in industries that have been designated through rulemaking under section 302(j) of the CAA. Previously, the EPA rules required that fugitive emissions be included in major modification applicable determinations for all source categories.

On February 17, 2009, the Natural Resources Defense Council (NRDC) submitted a petition for reconsideration of the December 2008 Fugitive Emissions Rule. On April 24, 2009, the EPA responded to the petition by letter indicating we were convening a reconsideration proceeding for the December 2008 Fugitive Emissions Rule and granted a 3-month administrative stay of the rule provisions. The initial 3-month administrative stay of the Fugitive Emissions Rule became effective on September 30, 2009. *See* 74 FR 50115. An interim final rule extending the administrative stay for an additional 3 months became effective on December 31, 2009. *See* 74 FR 5265692. An additional 18 month stay was finalized on March 31, 2010. *See* 75 FR 16012. The EPA finalized a final rule on March 30, 2011, titled PSD and NNSR: Reconsideration of Inclusion of Fugitive Rule. *See* 76 FR 17548. This final action stayed indefinitely the provisions of the December 2008 Fugitive Emissions Rule. As such, the Oklahoma PSD and NNSR programs must consider fugitive emissions in the major modification applicability determinations for all source categories.

Following is a summary of how the Oklahoma PSD program addresses fugitive emissions consistent with the current PSD requirements.

- The Oklahoma PSD program does not include the revisions to ''major modification'' or ''net emissions increase'' promulgated by the EPA in the December 2008 Fugitive Emissions Rule at 40 CFR 51.166(b)(2)(v) or 40 CFR 51.166(b)(3)(iii)(*d*), respectively. As such, the Oklahoma PSD program does not include the provisions that are indefinitely stayed.
- The Oklahoma PSD program continues to require fugitive emissions to be included in the major modification applicability determinations for all source categories.
- The Oklahoma SIP at OAC 252:100–1–3 includes the definition of ''fugitive emissions'' consistent with the federal definition at 40 CFR 51.166(b)(20).
- The definition of ''projected actual emissions'' at OAC 252:100–8–31 in the Oklahoma PSD program has been revised to include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions. This definition has also been revised to allow for the use of the emission unit's potential to emit in TPY consistent with 40 CFR 51.166(b)(40)(ii)(b) and (d).
- The definition of ''baseline actual emissions'' at OAC 252:100–8–31 in the Oklahoma PSD program has been revised to include fugitive emissions to the extent quantifiable for any existing electric utility steam generating unit (EUSGU) and any existing emissions unit other than an EUSGU consistent with 40 CFR 51.166(b)(47)(i)(a) and (ii)(a). This definition has also been revised to address the requirements for calculating baseline actual emissions for a new emissions unit consistent with 40 CFR 51.166(b)(47)(iii). This definition has also been revised to address the requirements for calculating baseline actual emissions or a PAL consistent with 40 CFR 51.166(b)(47)(iv).
- The Oklahoma SIP at OAC 252:100–8–33(a)(1)(B) includes the exemption at 40 CFR 51.166(i)(1)(ii).
- The source obligation provisions at OAC 252:100–8–36.2(c) for the requirements when using projected actual emissions are consistent with the obligation provisions found at 40 CFR 51.166(r)(6)(i)–(v). Note that the Oklahoma PSD program does not include the reasonable possibility provisions at 40 CFR 51.166(r)(6)(vi). Rather, the Oklahoma PSD program requires all sources using the ''projected actual emissions'' methodology to maintain records consistent with 40 CFR 51.166(r)(6). This is more stringent than federal requirements and is therefore approvable.
- The Oklahoma PSD program incorporates by reference the PSD PALs provisions at 40 CFR 51.166(w) as of July 2, 2007. However, the definition of ''baseline actual emissions'' for PALs is not part of this incorporation by reference. Per OAC 252:100–8–31 definition of ''baseline actual emissions,'' paragraph (E) for a PAL stationary source, the baseline actual emissions for an EUSGU or other existing emissions units other than an EUSGU shall be calculated using the general Oklahoma PSD definition of ''baseline actual emissions'' at OAC 252:100–8–31 and therefore will include fugitive emissions to the extent quantifiable.

Following is a summary of how the Oklahoma NNSR program addresses fugitive emissions.

- The Oklahoma NNSR program does not include the revisions to ''major modification'' or ''net emissions increase'' promulgated by the EPA in the December 2008 Fugitive Emissions Rule at 40 CFR 51.165(a)(1)(v)(G) or 40 CFR 51.165(a)(1)(vi)(C)(3), respectively. As such, the Oklahoma NNSR program does not include the provisions that are indefinitely stayed.
- The Oklahoma NNSR program continues to require fugitive emissions to be included in the major modification applicability determinations for all source categories.
- The Oklahoma NNSR program at OAC 252:100–8–51 incorporates by reference the federal NNSR definitions for ''major stationary source,'' ''fugitive emissions,'' and ''projected actual emissions'' as of July 1, 2010. The Oklahoma NNSR program does not IBR the definition of ''baseline actual emissions,'' rather the NNSR program relies on the Oklahoma PSD definition at OAC 252:100–8–31 for the definition of ''baseline actual emissions.''
- The applicability provisions at OAC 252:100–8–50 have been evaluated elsewhere in this TSD and determined to be consistent with federal requirements for NNSR.
- The Oklahoma NNSR program at OAC 252:100–8–53 incorporates by reference the requirements of 40 CFR 51.165(a)(4) regarding the exemption of fugitive emissions in determining whether a source or modification is major as of July 2, 2007. The Oklahoma NNSR program source obligations at OAC 252:100–8–55 incorporates by reference the requirements of 40 CFR 51.165(a)(6)(i) through (v) as of July 2, 2007. Additionally the Oklahoma NNSR program at OAC 252:100–8–57 incorporates by reference the requirements at 40 CFR 51.165(f) regarding actuals PALs as of July 2, 2007.

D. Evaluation Under Section 110(l) of the CAA

Under Section 110(l), the EPA cannot propose to approve a SIP revision that has not been developed with reasonable notice and public hearing. Nor can we propose to approve a revision that will worsen air quality. The submitted revisions to the Oklahoma SIP were developed using the Oklahoma SIP-

approved process with adequate notice and comment procedures. Our analysis also indicates that the revisions to the major source PSD and NNSR permitting programs are necessary to maintain consistency with federal permitting requirements. The revisions to the general Oklahoma SIP requirements are necessary to implement the major source permitting programs. As such, we find that the revisions to the Oklahoma PSD and NNSR programs and the General SIP requirements will support the state's air quality programs and will not interfere with attainment, reasonable further progress or any other applicable requirements of the CAA. Therefore, the EPA proposes to find that the revisions to the Oklahoma SIP submitted on June 24, 2010; July 16, 2010; December 27, 2010; February 6, 2012; and January 18, 2013 will not result in degradation of air quality.

III. Proposed Action

For the reasons presented above and in our accompanying TSD, the EPA proposes to approve the severable revisions to the Oklahoma SIP submitted on June 24, 2010; July 16, 2010; December 27, 2010; February 6, 2012; and January 18, 2013. We have made the preliminary determination that the revisions were developed and submitted in accordance with the requirements of the CAA and the EPA's regulations regarding SIP development at 40 CFR part 51. Additionally, we have determined that the submitted revisions to the Oklahoma PSD and NNSR programs are consistent with our major source permitting regulations at 40 CFR 51.160–51.166 and the associated policy and guidance. Therefore, under section 110 and parts C and D of the Act, the EPA proposes to fully approve into the Oklahoma SIP the following revisions:

TABLE 1—REVISIONS TO THE OKLAHOMA SIP PROPOSED FOR APPROVAL

Section	Title	Effective date	Submittal date
OAC 252:100–1–1	General Provisions, Purpose	June 12, 2003	July 16, 2010.
OAC 252:100–1–2	General Provisions, Statutory definitions	June 12, 2003	July 16, 2010.
OAC 252:100–1–3	General Provisions, Definitions	June 12, 2003	July 16, 2010.
		July 1, 2008	July 16, 2010.
		July 1, 2009	July 16, 2010.
		June 15, 2006	July 16, 2010.
		July 1, 2011	February 6, 2012.
		July 1, 2012	January 18, 2013.
OAC 252:100–1–4	General Provisions, Units, Abbreviations and acronyms.	June 12, 2003	July 16, 2010.
		July 1, 2009	July 16, 2010.
		July 1, 2011	February 6, 2012.
OAC 252:100–2–1	Incorporation by Reference (IBR) Purpose	July 1, 2012	January 18, 2013.
OAC 252:100–2–3	IBR, Incorporation by Reference	July 1, 2012	January 18, 2013.
OAC 252:100–3–4	Air Quality Standards and Increments, Significant Deterioration Increments.	June 15, 2005	December 27, 2010.
		July 1, 2011	February 6, 2012.
OAC 252:100, Appendix P	Regulated Air Pollutants	June 15, 2007	July 16, 2010.
OAC 252:100, Appendix Q	Incorporation by Reference	July 1, 2009	July 16, 2010.
		July 1, 2012	January 18, 2013.
OAC 252:100–5–1.1	Definitions	June 15, 2007	July 16, 2010.
OAC 252:100–5–2.1	Emission Inventory	June 11, 2004	July 16, 2010.
		June 15, 2007	July 16, 2010
OAC 252:100–8–1.1	General Provisions, Definitions	June 15, 2006	July 16, 2010.
OAC 252:100–8–30	Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas, Applicability.	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
OAC 252:100–8–31	PSD, Definitions	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
		July 1, 2011	February 6, 2012.
		July 1, 2012	January 18, 2013.
OAC 252:100–8–32	PSD, Source Applicability Determination	REVOKED June 15, 2006.	REVOKED July 16, 2010.
OAC 252:100–8–32.1	PSD Ambient Air Increments and Ceilings	June 15, 2006	July 16, 2010.
OAC 252:100–8–32.2	PSD Exclusion from Increment Consumption.	June 15, 2006	July 16, 2010.
OAC 252:100–8–32.3	PSD Stack Heights	June 15, 2006	July 16, 2010.
OAC 252:100–8–33	PSD, Exemptions	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
		July 1, 2011	February 6, 2012.
		July 1, 2012	January 18, 2013.
OAC 252:100–8–34	PSD, Control Technology Review	June 15, 2006	July 16, 2010.
OAC 252:100–8–35	PSD Air Quality Impact Evaluation	June 15, 2006	July 16, 2010.
		July 1, 2011	February 6, 2012.
OAC 252:100–8–35.1	PSD Source Information	June 15, 2006	July 16, 2010.
OAC 252:100–8–35.2	PSD Additional Impact Analyses	June 15, 2006	July 16, 2010.
OAC 252:100–8–36	PSD Source Impacting Class I Areas	June 15, 2006	July 16, 2010.
OAC 252:100–8–36.2	PSD Source Obligation	June 15, 2006	July 16, 2010.
OAC 252:100–8–37	PSD, Innovative Control Technology	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
OAC 252:100–8–38	PSD, Actuals PAL	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
OAC 252:100–8–39	PSD Severability	June 15, 2006	July 16, 2010.
OAC 252:100–8–50	Majors Affecting Nonattainment Areas (NNSR), Applicability.	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.

TABLE 1—REVISIONS TO THE OKLAHOMA SIP PROPOSED FOR APPROVAL—Continued

Section	Title	Effective date	Submittal date
OAC 252:100–8–50.1	NNSR, Incorporation by Reference	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
		July 1, 2011	February 6, 2012.
OAC 252:100–8–51	NNSR, Definitions	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
		July 1, 2011	February 6, 2012.
OAC 252:100–8–51.1	NNSR Emission reductions and offsets	June 15, 2006	July 16, 2010.
		July 1, 2011	February 6, 2012.
		July 1, 2012	January 18, 2013.
OAC 252:100–8–52	NNSR, Applicability determination for sources in attainment areas causing or contributing to NAAQS violations.	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
		July 1, 2011	February 6, 2012.
OAC 252:100–8–53	NNSR, Exemptions	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
OAC 252:100–8–54	NNSR Requirements for sources located in nonattainment areas.	June 15, 2006	July 16, 2010.
OAC 252:100–8–54.1	NNSR, Ozone and PM_{10} precursors	June 1, 2009	June 24, 2010.
OAC 252:100–8–55	NNSR, Source Obligation	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
OAC 252:100–8–56	NNSR, Actuals PAL	June 1, 2009	June 24, 2010.
		June 15, 2006	July 16, 2010.
OAC 252:100–8–57	NNSR Severability	June 15, 2006	July 16, 2010.

Upon promulgation of a final approval of the proposed revisions to address the GHG Step 1 permitting requirements, the EPA would also remove the provisions at 40 CFR 52.1929(c), under which the EPA narrowed the applicability of the Oklahoma PSD program to regulate sources consistent with federal requirements. The provisions at 40 CFR 52.1929(c) will no longer be necessary when we finalize approval of the State regulations into the Oklahoma SIP.

The EPA is proposing to find that the February 6, 2012, revisions to the Oklahoma NNSR program address all required NNSR elements for the implementation of the 1997 and 2006 $PM_{2.5}$ NAAQS. We note that the Oklahoma NNSR program does not include regulation of VOCs and ammonia as $PM_{2.5}$ precursors. However, as section 189(e) of the Act requires regulation of $PM_{2.5}$ precursors that significantly contribute to $PM_{2.5}$ levels ''which exceed the standard in the area'' and Oklahoma does not have a designated $PM_{2.5}$ nonattainment area, the revisions addressing only SO_2 and NO_X are not inconsistent with the requirements of the CAA. In the event that an area is designated nonattainment for the 2012 $PM_{2.5}$ NAAQS, or any other future $PM_{2.5}$ NAAQS, Oklahoma will have a deadline under section 189(a)(2) of the CAA to make a submission addressing the statutory requirements as to that area, including the requirements in section 189(e) that apply to the regulation of $PM_{2.5}$ precursors.

The EPA is also proposing a ministerial correction to 40 CFR 52.1920(c) to remove a duplicate entry for the SIP approval of OAC 252:100–5–1. We propose to remove the first listing of this section, and retain the identical entry in numerical order under OAC, Title 252, Subchapter 5—Registration, Emissions Inventory, and Annual Operating Fees.

The EPA invites the public to make comments on all aspects of our proposed full approval of the revisions to the Oklahoma SIP as presented above and to submit them by the indicated Date. After reviewing the comments received, we will make a final determination of the approvability of the specified revisions to the Oklahoma SIP in the **Federal Register**.

IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Oklahoma regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 the 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, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, 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: June 22, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–15618 Filed 6–29–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0522; FRL–9948–51–Region 5]

Air Plan Approval; Ohio; Removal of Stage II Gasoline Vapor Recovery Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Ohio Environmental Protection Agency (Ohio EPA) on July 15, 2015 and February 29, 2016, concerning the state's Stage II vapor recovery (Stage II) program for the Cleveland, Cincinnati, and Dayton ozone areas in Ohio. The revision removes Stage II requirements for the three areas as a component of the Ohio ozone SIP. The submittal also includes a demonstration as required by the Clean Air Act (CAA) that addresses emissions impacts associated with the removal of the program.

DATES: Comments must be received on or before August 1, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0522 at *http://www.regulations.gov,* or via email to *persoon.carolyn@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Mobile Source Program Manager, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061, *acevedo.francisco@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. Background

Stage II and onboard refueling vapor recovery systems (ORVR) are two types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. Stage II systems are specifically installed at gasoline dispensing facilities (GDF) and capture the refueling fuel vapors at the gasoline pump nozzle. The system carries the vapors back to the underground storage tank at the GDF to prevent the vapors from escaping to the atmosphere. ORVR systems are carbon canisters installed directly on automobiles to capture the fuel vapors evacuated from the gasoline tank before they reach the nozzle. The fuel vapors captured in the carbon canisters are then combusted in the engine when the automobile is in operation. Stage II and vehicle ORVR were initially both required by the 1990 Amendments to the CAA under sections 182(b)(3) and 202(a)(6), respectively. In some areas Stage II has been in place for over 25 years, but Stage II was not widely implemented by the states until the early to mid-1990s as a result of the CAA requirements for moderate, serious, severe, and extreme ozone nonattainment areas, and for states in the Northeast Ozone Transport Region (OTR) under CAA section 184(b)(2).

CAA section 202(a)(6) required EPA to promulgate regulations for ORVR for light-duty vehicles (passenger cars). EPA adopted these requirements in 1994, at which point moderate ozone nonattainment areas were no longer subject to the section 182(b)(3) Stage II requirement. However, some moderate areas retained Stage II requirements to provide a control method to comply with rate-of-progress emission reduction targets. ORVR equipment has been phased in for new passenger vehicles beginning with model year 1998, and starting in 2001 for light-duty trucks and most heavy-duty gasoline-powered vehicles. ORVR equipment has been installed on nearly all new gasoline-powered light-duty vehicles, light-duty trucks and heavy-duty vehicles since 2006.

During the phase-in of ORVR controls, Stage II has provided volatile organic compound (VOC) reductions in ozone nonattainment areas and certain attainment areas of the OTR. Congress recognized that ORVR and Stage II would eventually become largely redundant technologies, and provided authority to EPA to allow states to remove Stage II from their SIPs after EPA finds that ORVR is in widespread use.

Effective May 16, 2012 (77 FR 28772), EPA determined that ORVR is in widespread nationwide use for control of gasoline emissions during refueling of vehicles at GDFs. Currently, more than 75 percent of gasoline refueling nationwide occurs with ORVR-equipped vehicles, so Stage II programs have become largely redundant control