gross vehicle weight rating (GVWR), requires onboard diagnostic testing on Model Year (MY) 1996 and newer vehicles, and requires more comprehensive tailpipe testing on MY 1995 and older vehicles. The enhanced I/M program also implements an Emissions Control Device Inspection through visual inspection for the presence of catalytic converter(s) and other major emissions control equipment.

III. Evaluation of State's SIP-Approved I/M Program

Connecticut's I/M program was first approved into the SIP on May 21, 1984 (49 FR 10542) and has been modified several times to accommodate the CAA requirements and technological advancements such as on-board diagnostic testing. As part of the OTR, Connecticut is required to implement an enhanced I/M program in specific areas per CAA 184(b)(1). Connecticut exceeds federal requirements by requiring the enhanced I/M program statewide. EPA approved revisions to Connecticut's I/M program into the SIP in 2008 and 2015 (see 73 FR 74019 and 80 FR 13768 respectively). We find that Connecticut's I/M program certifications further strengthen the SIP and meet federal requirements.

IV. Proposed Action

We are proposing to approve the motor vehicle emissions I/M program certifications included in the attainment demonstrations submitted by the State of Connecticut for the 2008 ozone NAAQS for the Greater Connecticut and the Connecticut portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT moderate nonattainment areas.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rulemaking by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- 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 Clean Air Act; 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the 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.

Dated: December 21, 2018.

Alexandra Dunn,

Regional Administrator, EPA Region 1.

[FR Doc. 2019–00656 Filed 1–31–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0018; FRL–9988–82–Region 4]

Air Plan Approval; Kentucky: Jefferson County Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve two revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), with letters dated August 25, 2017, and March 15, 2018. The proposed SIP revisions were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District) and make amendments to Jefferson County's regulation regarding the prevention of significant deterioration (PSD) permitting program. This action is being proposed pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before March 4, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0018 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* 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, 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: Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8966. Mr. Febres can also be reached via electronic mail at *febres-martinez.andres@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA proposing?

EPA is proposing to approve changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through two letters dated August 25, 2017, and March 15, 2018.[1] EPA is proposing to approve portions of these SIP revisions that make changes to the District's Regulation 2.05—*Prevention of Significant Deterioration of Air Quality,* which applies to the construction and modification of any major stationary source in areas designated as attainment or unclassifiable as required by part C of title I of the CAA. These revisions are intended to make the Jefferson County PSD permitting regulation consistent with the federal requirements, as promulgated by EPA.[2] The August 25, 2017, and March 15, 2018, SIP revisions update the incorporation by reference (IBR) date found at Regulation 2.05 from July 1, 2010, to July 15, 2017, for the federal PSD permitting regulations at 40 CFR 52.21. By updating the IBR date for 40 CFR 52.21, Jefferson County is making the following changes to their PSD regulations: (1) Adopting ''increments'' for the $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS); (2) adopting updated greenhouse gases (GHGs) provisions; (3) incorporating grandfathering provisions for the 2012 primary annual $PM_{2.5}$ NAAQS and the 2015 8-hour ozone NAAQS, as well as adopting the repeal of grandfathering provisions for the old $PM_{2.5}$ NAAQS; and (4) incorporating a correction to the definition of ''regulated NSR pollutant'' for PSD. These changes are discussed in more detail in the following sections.[3]

II. Background

A. 1997 $PM_{2.5}$ NAAQS Implementation

1. Implementation of NSR for the $PM_{2.5}$ NAAQS and Grandfathering Provisions

On May 16, 2008 (73 FR 28321), EPA published the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' Final Rule (hereinafter referred to as the NSR $PM_{2.5}$ Rule). The 2008 NSR $PM_{2.5}$ Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. As indicated in the 2008 NSR $PM_{2.5}$ Rule, 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 was 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 a policy in which PM_{10} served as a surrogate for $PM_{2.5}$ for up to three years (until May 2011) or until the individual revised state PSD programs for $PM_{2.5}$ were approved by EPA, whichever came first.[4]

On May 18, 2011 (76 FR 28646), EPA took final action to repeal the $PM_{2.5}$ grandfathering provision contained in the federal PSD program at 40 CFR 52.21(i)(1)(xi). This final action also 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)[5] 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 $PM_{2.5}$.

The NSR $PM_{2.5}$ Rule also established the following NSR requirements to implement the $PM_{2.5}$ NAAQS: (1) Required NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) established significant emission rates for direct $PM_{2.5}$ and precursor pollutants (including sulfur dioxide and oxides of nitrogen); (3) established $PM_{2.5}$ emission offsets; and (4) required states to account for gases that condense to form particles (''condensables'') in $PM_{2.5}$ and PM_{10} emission limits in PSD or NNSR permits. In addition, the NSR $PM_{2.5}$ Rule gives states the option of allowing interpollutant trading for the purpose of precursor offsets under the $PM_{2.5}$ NNSR program.[6]

[1] EPA notes that the Agency received the SIP revisions on August 29, 2017, and March 18, 2018.

[2] EPA's regulations governing the implementation of New Source Review (NSR) permitting programs are contained in 40 CFR 51.160—51.166; 52.21, 52.24; and part 51, Appendix S. The CAA NSR program is composed of three separate programs: PSD, nonattainment NSR (NNSR), and Minor NSR. The PSD program is established in part C of title I of the CAA and applies in areas that meet the National Ambient Air Quality Standards (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 the NSR programs.

[3] EPA has not approved, and is not currently proposing to approve into the Jefferson County portion of the Kentucky SIP, the provisions of the Ethanol Rule (May 1, 2007; 72 FR 24060), that seek to exclude facilities that produce ethanol through a natural fermentation process, from the definition of ''chemical process plants'' in the major NSR source permitting program found at 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t). Additionally, EPA notes that the PSD provisions found at 40 CFR 52.21(b)(2)(v) and (b)(3)(iii)(*c*), regarding the Fugitive Emissions Rule (December 19, 2008; 73 FR 77882), were initially stayed for an 18-month period on March 31, 2010, and subsequently stayed indefinitely by the Fugitive Emissions Interim Rule, on March 30, 2011 (76 FR 17548). These fugitive emissions provisions are automatically stayed in the Jefferson County portion of the Kentucky SIP, under the SIP-approved ''automatic rescission clause'' at Regulation 2.05, which provides that in the event that EPA or a federal court stays, vacates, or withdraws any section or subsection of 40 CFR 52.21, that section or subsection shall automatically be deemed stayed, vacated or withdrawn.

[4] 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 $PM_{2.5}$,'' which allows for the regulation of PM_{10} as a surrogate for $PM_{2.5}$ until significant technical issues were resolved (the ''PM_{10} Surrogate Policy''). John S. Seitz, EPA, October 23, 1997.

[5] 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* 73 FR 28321.

[6] On July 21, 2011, as a result of reconsidering the interpollutant trading (IPT) policy, EPA issued a memorandum indicating that the existing preferred precursor offset ratios associated with the IPT policy and promulgated in the NSR $PM_{2.5}$ Rule were no longer considered approvable. The memorandum stated that any $PM_{2.5}$ precursor offset ratio submitted as part of the NSR SIP for $PM_{2.5}$

Continued

By revising the IBR date of 40 CFR 52.21 to July 15, 2017, Jefferson County's August 25, 2017, and March 15, 2018, SIP revisions capture the repeal of this grandfathering provision as promulgated by EPA on May 18, 2011 (76 FR 28646). However, this grandfathering provision was never incorporated into the Jefferson County portion of the Kentucky SIP, and so this action does not change the SIP for this grandfathering provision. Further details can be found in Section III below, under our analysis of the Commonwealth's submittal.

2. $PM_{2.5}$ Condensables Correction Rule

Among the changes included in the 2008 NSR $PM_{2.5}$ Rule mentioned in Section II.A.1 above, 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.'' *See* 73 FR 28321 at 28348 (May 16, 2008). A similar paragraph added to the NNSR rule did not include ''particulate matter (PM) emissions.'' *See* 40 CFR 51.165(a)(1)(xxxvii)(D).

On October 25, 2012 (77 FR 65107), EPA took final action to amend the definition, promulgated in the 2008 NSR $PM_{2.5}$ Rule, of ''regulated NSR pollutant'' contained in the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i) and Appendix S to 40 CFR 51 (hereinafter referred to as the $PM_{2.5}$ Condensables Correction Rule). The $PM_{2.5}$ Condensables Correction Rule removed the inadvertent requirement in the 2008 NSR $PM_{2.5}$ Rule that the measurement of condensable particulate matter be included as part of the measurement and regulation of ''particulate matter emissions'' under the PSD program. The term ''particulate matter emissions'' includes only filterable particles that are larger than $PM_{2.5}$ and larger than PM_{10}.

By revising the IBR date of 40 CFR 52.21 to July 15, 2017, Jefferson County's August 25, 2017, and March 15, 2018, SIP revisions capture the $PM_{2.5}$ Condensables Correction Rule promulgated by EPA on October 25, 2012 (77 FR 65107).

3. $PM_{2.5}$ PSD-Increment-SILs-SMC Rule

On October 20, 2010 (75 FR 64863), EPA published a final rulemaking entitled ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$),'' amending the requirements for $PM_{2.5}$ under the federal PSD program (also referred to as the $PM_{2.5}$ PSD-Increments-SILs-SMC Rule). The October 20, 2010, final rulemaking established the following: (1) $PM_{2.5}$ increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS; (2) $PM_{2.5}$ Significant Impact Levels (SILs) for PSD and NNSR; and (3) Significant Monitoring Concentration (SMC) for PSD purposes.

Subsequently, in response to a challenge to the $PM_{2.5}$ SILs and SMC provisions of the $PM_{2.5}$ PSD-Increment-SILs-SMC Rule, the D.C. Circuit vacated and remanded to EPA the portions of the rule addressing $PM_{2.5}$ SILs, except for the $PM_{2.5}$ SILs promulgated in EPA's NNSR rules at 40 CFR 51.165(b)(2). *See Sierra Club* v. *EPA,* 705 F.3d 458, 469 (D.C. Cir. 2013). The D.C. Circuit also vacated the parts of the rule establishing a $PM_{2.5}$ SMC for PSD purposes. *Id.* EPA removed these vacated provisions in a December 9, 2013 (78 FR 73698), final rule.

The $PM_{2.5}$ SILs promulgated in EPA's NNSR regulations at 40 CFR 51.165(b)(2) were not vacated by the D.C. Circuit because unlike the SILs promulgated in the PSD regulations (40 CFR 51.166, 52.21), the SILs promulgated in the NNSR regulations at 40 CFR 51.165(b)(2) do not serve to exempt a source from conducting a cumulative air quality analysis. Rather, the SILs promulgated at 40 CFR 51.165(b)(2) establish levels at which a proposed new major source or major modification located in an area designated as attainment or unclassifiable for any NAAQS would be considered to cause or contribute to a violation of a NAAQS in any area. For this reason, the D.C. Circuit left the $PM_{2.5}$ SILs at 40 CFR 51.165(b)(2) in place.

By revising the IBR date of 40 CFR 52.21 to July 15, 2017, Jefferson County's August 25, 2017, and March 15, 2018, SIP revisions incorporate the $PM_{2.5}$ increment and do not incorporate the $PM_{2.5}$ SILs and SMC provisions for PSD permitting that were vacated and remanded elements of the $PM_{2.5}$ PSD-Increment-SILs-SMC Rule.

B. Greenhouse Gases and Plantwide Applicability Limits

On January 2, 2011, emissions of GHGs were, for the first time, covered by the PSD and title V operating permit programs.[7] To establish a process for phasing in the permitting requirements for stationary sources of GHGs under the CAA PSD and title V programs, on June 3, 2010 (75 FR 31514), EPA published a final rule entitled ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (hereinafter referred to as the GHG Tailoring Rule). In Step 1 of the GHG Tailoring Rule, which began on January 2, 2011, EPA limited application of PSD and title V requirements to sources of GHG emissions only if they were subject to PSD or title V ''anyway'' due to their emissions of pollutants other than GHGs. These sources are referred to as ''anyway sources.''

In Step 2 of the GHG Tailoring Rule, which applied as of July 1, 2011, the PSD and title V permitting requirements applied to some sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. Step 2 also applied PSD permitting requirements to modifications of otherwise major sources that would increase only GHG emissions above the level in EPA regulations. EPA generally described the sources covered by PSD during Step 2 of the GHG Tailoring Rule as ''Step 2 sources'' or ''GHG-only sources.''

Subsequently, EPA published the GHG Step 3 Rule on July 12, 2012 (77 FR 41051). In this rule, EPA decided against further phase-in of the PSD and title V requirements for sources emitting lower levels of GHG emissions. Thus, the thresholds for determining PSD applicability based on emissions of GHGs remained the same as established in Step 2 of the Tailoring Rule.

In addition, the July 12, 2012 (77 FR 41051), final rule revised EPA regulations under 40 CFR part 52 for establishing plant-wide applicability limits (PALs) for GHG emissions. A PAL establishes a site-specific plantwide emission level for a pollutant that allows the source to make changes at the facility without triggering the requirements of the PSD program, provided that emissions do not exceed the PAL level. Under EPA's interpretation of the federal PAL

nonattainment areas would need to be accompanied by a technical demonstration exhibiting how the ratios are suitable for that particular nonattainment area. *See* Memorandum from Gina McCarthy to Regional Air Division Directors, ''Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles ($PM_{2.5}$)'' (July 21, 2011) (available at *https://www3.epa.gov/scram001/guidance/clarification/pm25trade.pdf*).

[7] See the rule entitled ''Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs,'' Final Rule, 75 FR 17004 (April 2, 2010).

provisions, such PALs are already available under PSD for non-GHG pollutants and for GHGs on a mass basis. EPA revised the PAL regulations to allow for GHG PALs to be established on a carbon dioxide equivalent (CO_2e) [8] basis as well. EPA finalized these changes in an effort to streamline federal and SIP PSD permitting programs by allowing sources and permitting authorities to address GHGs using PALs in a manner similar to the use of PALs for non-GHG pollutants.

On June 23, 2014, the U.S. Supreme Court addressed the application of stationary source permitting requirements to GHG emissions in *Utility Air Regulatory Group (UARG)* v. *EPA,* 134 S. Ct. 2427 (2014). The Supreme Court upheld EPA's regulation of Step 1—or ''anyway'' sources—but held that EPA may not treat GHGs as air pollutants for the purposes of determining whether a source is a major source (or a modification thereof) and thus require the source to obtain a PSD or title V permit. Therefore, the Court invalidated PSD and title V permitting requirements for Step 2 sources.

In accordance with the Supreme Court decision, on April 10, 2015, the D.C. Circuit issued an Amended Judgment vacating the regulations that implemented Step 2 of the GHG Tailoring Rule, but not the regulations that implement Step 1 of the GHG Tailoring Rule. *Coalition for Responsible Regulation, Inc.* v. *EPA,* 606 Fed. Appx. 6, 7 (D.C. Cir. 2015). With respect to Step 2 sources, the D.C. Circuit's Judgment vacated EPA regulations under review (including 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v)) ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases 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.'' *Id.* at 7–8.

EPA promulgated a final rule on August 19, 2015, entitled ''Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Elements.'' *See* 80 FR 50199 (August 19, 2015). The rule removed from the federal regulations the portions of the PSD permitting provisions for Step 2 sources that were vacated by the D.C. Circuit (*i.e.,* 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v)). EPA therefore no longer has the authority to conduct PSD permitting for Step 2 sources, nor can EPA approve provisions submitted by a state for inclusion in its SIP providing this authority. In addition, on October 3, 2016 (81 FR 68110), EPA proposed to revise provisions in the PSD permitting regulations applicable to GHGs to fully conform with *UARG* and the Amended Judgment, but those revisions have not been finalized.

By revising the IBR date of 40 CFR 52.21, Jefferson County's August 25, 2017, and March 15, 2018, SIP revisions capture the GHG Tailoring Rule as of the updated effective date of July 15, 2017.[9]

C. Grandfathering Provisions for the 2012 Primary Annual $PM_{2.5}$ and 2015 Ozone NAAQS

Pursuant to section 165(a)(3)(B) of the CAA and the implementing PSD regulations at 40 CFR 52.21(k)(1) and 51.166(k)(1), EPA requires that PSD permit applications include a demonstration that emissions from the proposed facility will not cause or contribute to a violation of any NAAQS that is in effect on the date the PSD permit is issued. On January 15, 2013 (78 FR 3086), and October 26, 2015 (80 FR 65292), EPA published new primary annual $PM_{2.5}$ NAAQS and 8-hour ozone NAAQS, respectively. In these two revisions to the NAAQS, EPA established limited grandfathering provisions for certain PSD permit applications pending on the effective date of these revised NAAQS. Additionally, the revisions to both standards included the option to allow states and other air agencies that issue PSD permits under SIP-approved PSD programs to adopt a comparable grandfathering provision, as long as the provision is at least as stringent as that added to 40 CFR 51.166.

For the 2012 primary annual $PM_{2.5}$ NAAQS, sources with PSD permit applications that meet one of the following conditions would be allowed to give a demonstration that the source requesting the permit does not cause or contribute to a violation of the NAAQS based on the previous 1997 primary annual $PM_{2.5}$ standard instead of the revised 2012 standard: (1) Applications that have been determined to be complete on or before December 14, 2012; or (2) applications for which public notice of a draft permit or preliminary determination has been published as of the effective date of the revised 2012 $PM_{2.5}$ NAAQS (March 18, 2013).

For the 2015 8-hour ozone NAAQS revision, sources with PSD permit applications that meet one of the following conditions would be allowed to give a demonstration that the source requesting the permit does not cause or contribute to a violation of the NAAQS based on the previous 2008 8-hour ozone standard, instead of the revised 2015 standard: (1) Applications for which the reviewing authority has formally determined that the application is complete on or before October 1, 2015; or (2) applications for which the reviewing authority has first published a public notice of the draft permit or preliminary determination before the effective date of the revised 2015 8-hour ozone NAAQS (December 28, 2015).

By revising the IBR date of 40 CFR 52.21 to July 15, 2017, Jefferson County's August 25, 2017, and March 15, 2018, SIP revisions incorporate both the 2012 annual $PM_{2.5}$ and 2015 8-hour ozone grandfathering provisions for the PSD program.

III. Analysis of State Submittal

Jefferson County currently has a SIP-approved NSR program for PSD under Regulation 2.05 of the Louisville Metro Air Pollution Control District regulations, which adopts the necessary provisions by way of an IBR of the federal PSD regulations found at 40 CFR 52.21. The current SIP-approved version of Regulation 2.05 is version 10, which contains an IBR date of July 1, 2010. The August 25, 2017, SIP revision requests for EPA to adopt version 12 of Regulation 2.05 into the SIP, which updates the IBR date to July 15, 2016.[10]

[8] CO_2 equivalent (CO_2e) emissions refers to emissions of six recognized GHGs other than CO_2 which are scaled to equivalent CO_2 emissions by relative global warming potential values, then summed with CO_2 to determine a total equivalent emissions value. *See* 40 CFR 51.166(48)(ii) and 52.21(49)(ii).

[9] As noted earlier in footnote #3, Jefferson County has an ''automatic rescission clause'' approved into the SIP at Regulation 2.05, which provides that in the event that EPA or a federal court stays, vacates, or withdraws any section or subsection of 40 CFR 52.21, that section or subsection shall automatically be deemed stayed, vacated or withdrawn from Jefferson County's SIP-approved PSD program at Regulation 2.05.

[10] There is a redline-strikeout for version 11 of Regulation 2.05 in the Docket for this proposed rulemaking. EPA never adopted version 11 of Regulation 2.05 into the SIP. However, version 11 was previously submitted to EPA for adoption on December 21, 2016. In version 11 of Regulation 2.05, Jefferson County proposed to eliminate the IBR date for 40 CFR 52.21, and substitute it with a reference to the specified version of 52.21 found in Regulation 1.15 of the Louisville Metro Air Pollution Control District regulations. However, Regulation 1.15 is not a SIP-approved regulation. To prevent this gap, Jefferson County withdrew version 11 of Regulation 2.05 from EPA consideration. In the cover letter for the August 25, 2017, SIP revision being proposed for approval in this notice, Jefferson County withdrew the request to adopt version 11 from their December 21, 2016, submittal, but specified that the redline strikeout for that version would remain in the submittal for reference purposes.

Subsequently, the March 15, 2018, SIP revision requests for EPA to adopt version 13 of Regulation 2.05 into the SIP, which updates the IBR date to July 15, 2017.

As mentioned in Section I, the effects of changing the IBR date for 40 CFR 52.21, include the following changes: (1) Adopting ''increments'' for the $PM_{2.5}$ NAAQS; (2) adopting updated GHGs provisions; (3) incorporating grandfathering provisions for the 2012 primary annual $PM_{2.5}$ NAAQS and the 2015 8-hour ozone NAAQS, as well as adopting the repealed grandfathering provisions for the old $PM_{2.5}$ NAAQS; and (4) incorporating a correction to the definition of ''regulated NSR pollutant'' for PSD. These changes are discussed in more detail below.

First, Jefferson County's IBR update adopts PSD provisions promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule, in particular the PSD increments for $PM_{2.5}$ annual and 24-hour NAAQS. These provisions include: (1) The $PM_{2.5}$ increments as promulgated at 40 CFR 52.21(c)(1) and (p)(5) (for Class I Variances); and (2) amendments to the terms ''*major source baseline date*'' (at 40 CFR 52.21(b)(14)(i)(c)), ''*minor source baseline date*'' (including establishment of the ''trigger date'') (at section 52.21(b)(14)(ii)(c)) and ''*baseline area*'' (as amended at 52.21(b)(15)(i)). These changes provide for the implementation of the $PM_{2.5}$ PSD increments for the $PM_{2.5}$ NAAQS in Jefferson County's PSD program.

As mentioned above in Section II.A.3, the $PM_{2.5}$ SILs and SMC portion of the $PM_{2.5}$ PSD-Increment-SILs-SMC Rule has since been vacated by the D.C. Circuit's January 22, 2013, decision (*Sierra Club* v. *EPA,* 705 F.3d 458), and EPA subsequently removed the vacated provisions from 40 CFR 52.21 (78 FR 73698). For this reason, Jefferson County's IBR updates simply adopt the increments portion of the $PM_{2.5}$ PSD-Increment-SILs-SMC Rule. EPA has made the preliminary determination to approve the aforementioned PSD permitting provisions promulgated in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule into the Jefferson County portion of the Kentucky SIP.

Second, Jefferson County's IBR update adds updated PSD permitting requirements for GHGs. This includes the incorporation of the GHG Step 3 Rule provisions, which will allow GHG-emitting sources to obtain PALs for their GHG emissions on a CO_2e basis. As explained in Section II.B above, a PAL establishes a site-specific plantwide emission level for a pollutant, which allows the source to make changes to individual units at the facility without triggering the requirements of the PSD program, provided that facility-wide emissions do not exceed the PAL.

Additionally, the federal GHG PAL regulations include provisions that apply solely to GHG-only, or Step 2, sources. Some of these provisions may no longer be applicable in light of the Supreme Court's decision in *UARG* and the D.C. Circuit's Amended Judgment. Since the Supreme Court has determined that sources and modifications may not be defined as ''major'' solely on the basis of GHGs emitted or increased, PALs for GHGs may no longer have value in some situations where a source might have triggered PSD based on GHG emissions alone. EPA has proposed action in an October 3, 2016 (81 FR 68110), proposed rule to clarify the GHG PAL rules. However, PALs for GHGs may still have a role to play in determining whether a source that is already subject to PSD for a pollutant other than GHGs should also be subject to PSD for GHGs.

The existing GHG PALs regulations do not add new requirements for sources or modifications that only emit or increase greenhouse gases above the major source threshold or the 75,000 ton per year GHG level in 40 CFR 52.21(b)(49)(iv). Rather, the PAL provisions provide increased flexibility to sources that wish to address their GHG emissions in a PAL.

EPA discussed the effects of PALs in the Supplemental Environmental Analysis of the Impact of the 2002 Final NSR Improvement Rules (November 21, 2002) (Supplemental Analysis). The Supplemental Analysis explained, ''[t]he EPA expects that the adoption of PAL provisions will result in a net environmental benefit. Our experience to date is that the emissions caps found in PAL-type permits result in real emissions reductions, as well as other benefits.'' Supplemental Analysis at 6; *see also* 76 FR 49313, 49315 (August 10, 2011). Since this flexibility may still be valuable to sources in at least one context described above, EPA believes that it is appropriate to propose approval of these provisions into the Jefferson County portion of the Kentucky SIP.

Moreover, Jefferson County's IBR update incorporates the Federal PSD provisions as of July 15, 2017, which is after the *UARG* decision, the D.C. Circuit's Amended Judgment, and EPA's August 19, 2015, Good Cause GHG Rule. Therefore, Jefferson County's incorporation includes fixes to the Federal rules to discontinue regulation of GHG-only, or Step 2, sources. EPA has preliminarily concluded that approving the updated effective date into the Jefferson County portion of the Kentucky SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA.

Third, Jefferson County's IBR update incorporates revisions to the PSD permitting requirements for both the 2012 primary annual $PM_{2.5}$ NAAQS, as promulgated on January 15, 2013 (78 FR 3086), and the 2015 ozone 8-hour NAAQS, as promulgated on October 26, 2015 (80 FR 65292). The new incorporation by reference date adds limited grandfathering provisions for both standards that allows sources who are eligible to meet the previous standard for these NAAQS instead of the newly promulgated standards. EPA is proposing to approve these grandfathering provisions of the 2012 primary annual $PM_{2.5}$ and the 2015 8-hour ozone NAAQS, as incorporated by reference. EPA has preliminarily concluded that this change will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. The rationale for allowing states to include these grandfathering provisions into their SIPs is discussed in detail at 78 FR 3086 (January 15, 2013) (2012 primary annual $PM_{2.5}$ NAAQS) and 80 FR 65292 (October 26, 2015) (2015 8-hour ozone NAAQS).

In addition, the IBR date change captures the removal of the $PM_{2.5}$ grandfathering provision contained in the federal PSD program at 40 CFR 52.21(i)(1)(xi), as promulgated by EPA on May 18, 2011 (76 FR 28646), which ended the use of the 1997 PM_{10} Surrogate Policy for PSD permits. Although the July 1, 2010, effective date in Jefferson County's current SIP-approved version of Regulation 2.05 (version 10) did capture the original incorporation of this grandfathering provision, EPA's approval of this version was done after the May 18, 2011 repeal of the 1997 PM_{10} Surrogate Policy. *See* 77 FR 62150 (October 12, 2012). Because of this, EPA specified in the October 12, 2012 final rulemaking that it was not taking action to approve this provision. With the IBR date change proposed for approval now, this provision would now be removed from the Jefferson County PSD programs, but because EPA never approved this change into the Jefferson County portion of the Kentucky SIP, no action is needed to remove it from the SIP.

Lastly, Jefferson County's IBR update adopts changes made by EPA in the

$PM_{2.5}$ Condensables Correction Rule as promulgated on October 25, 2012 (77 FR 65107). As explained in Section II.A.2, the Federal rule corrected an inadvertent error in the definition of ''regulated NSR pollutant'' at 40 CFR 52.21(b)(50). In the Condensable Correction Rule, EPA explained that requiring inclusion of condensable PM in measurements of ''particulate matter emissions'' would have little (if any) effect on preventing significant air quality deterioration or on efforts to attain the primary and secondary PM NAAQS. Therefore, EPA has preliminarily concluded that this change to Jefferson County's portion of the Kentucky SIP is consistent with the current Federal rule, will not interfere with attainment or maintenance of the PM NAAQS, any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA, and is proposing to approve these revisions into the Jefferson County portion of the Kentucky SIP.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Jefferson County's Regulation 2.05, *Prevention of Significant Deterioration of Air Quality,* version 13, which is intended to make the Jefferson County PSD permitting regulation consistent with the federal requirements and is state effective January 17, 2018. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Proposed Action

EPA is proposing to approve changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through two letters dated August 25, 2017, and March 15, 2018, to update the IBR date for the Federal requirements of the PSD program found at 40 CFR 52.21. This SIP revision is intended to make Jefferson County's PSD permitting rule consistent with the Federal requirements, as promulgated by EPA. The August 25, 2017, SIP revision updates the IBR date at Jefferson County's Regulation 2.05—*Prevention of Significant Deterioration of Air Quality,* to July 15, 2016, for the federal PSD permitting regulations at 40 CFR 52.21. Subsequently, the March 15, 2018, SIP revision updates the IBR date at Jefferson County's Regulation 2.05 to July 15, 2017.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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. 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 proposed 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: December 17, 2018.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2019–00781 Filed 1–31–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2018–0791; FRL–9988–43–Region 1]

Air Plan Approval; Massachusetts; Regional Haze Five-Year Progress Report State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Massachusetts regional haze progress report submitted as a State Implementation Plan (SIP) revision on February 9, 2018. This revision addresses the requirements of the Clean Air Act and its implementing regulations that states submit periodic reports describing progress toward reasonable progress goals established for regional haze and a determination of adequacy of the state's existing regional haze SIP. Massachusetts' progress report notes that Massachusetts has implemented the measures in the regional haze SIP due to be in place by the date of the progress report and that visibility in the federal Class I areas affected by emissions from Massachusetts is improving and has already met the applicable reasonable progress goals for 2018. The EPA is proposing approval of Massachusetts' determination that the Commonwealth's