comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,

Regional Director, North Atlantic—Appalachian Region.

[FR Doc. 2021–08736 Filed 4–27–21; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0501, EPA–R05–OAR–2020–0502, EPA–R05–OAR–2020–0503; FRL–10022–89–Region 5]

Air Plan Approval; Illinois; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Illinois State Implementation Plan (SIP) that were submitted by the Illinois Environmental Protection Agency (IEPA) on September 22, 2020. These revisions implement new preconstruction permitting regulations for certain new or modified sources of air pollution in attainment and unclassifiable areas under the Prevention of Significant Deterioration (PSD) program of the Clean Air Act (CAA). Currently, the PSD program in Illinois is operated under a Federal Implementation Plan (FIP).

DATES: Comments must be received on or before May 28, 2021.

ADDRESSES: Submit your comments, identified by Docket ID Nos. EPA–R05–OAR–2020–0501, EPA–R05–OAR–2020–0502, or EPA–R05–OAR–2020–0503 at *http://www.regulations.gov,* or via email to *damico.genevieve@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: David Ogulei, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–0987, *ogulei.david@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

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

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I. Background for Proposed Action

Section 110(a)(2)(C) of the CAA requires that each SIP include a program to provide for the regulation of the construction and modification of stationary sources within the areas covered by the SIP. We refer to these as the New Source Review (NSR) provisions. They consist primarily of: (1) A permit program as required by part C of subsection I of the CAA, PSD, as necessary to assure that national ambient air quality standards (NAAQS) are achieved; (2) a permit program as required by part D of subsection I of the CAA, Plan Requirements for Nonattainment Areas, as necessary to assure that NAAQS are attained and maintained in ''nonattainment areas'' (known as ''nonattainment NSR''); and (3) a permit program for minor sources and minor modifications of major sources as required by section 110(a)(2)(C) of the CAA. Specific plan requirements for an approvable PSD SIP are provided in sections 160–169 of the CAA and the implementing regulations at 40 CFR 51.166. The requirements applicable to SIP requirements for nonattainment areas are provided in sections 171–193 of the CAA and the implementing regulations at 40 CFR 51.165 and part 51, appendix S. The Federal PSD requirements at 40 CFR 52.21 apply through FIPs in states without a SIP-approved PSD program.

The PSD program applies to new major sources or major modifications at existing stationary sources for pollutants where the area the source is located has been designated as ''attainment'' or ''unclassifiable'' with respect to the NAAQS under section 107(d) of the CAA. Under section 160 of the CAA, the purposes of the PSD program are to: (1) Protect public health and welfare; (2) preserve, protect and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value; (3) ensure that economic growth will

occur in a manner consistent with the preservation of existing clean air resources; (4) assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and (5) assure that any decision to permit increased air pollution in any area to which the PSD program applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decision making process.

Before a PSD permit can be issued, the stationary source must demonstrate that the new major source or major modification will be equipped with the Best Available Control Technology (BACT) for all pollutants regulated under the PSD program that are emitted in significant amounts, and that increased emissions from the project will not result in a violation of the NAAQS or applicable ambient air quality increments. *See* CAA section 165.

Because Illinois does not currently have a SIP-approved PSD program, PSD permits in Illinois have been issued under a FIP incorporating 40 CFR 52.21. Prior to April 7, 1980, EPA was solely responsible for, and operated, the PSD permitting program in Illinois. However, since April 7, 1980, IEPA has issued PSD permits under a delegation agreement with EPA that authorizes IEPA to implement the FIP. *See* 46 FR 9580 (January 29, 1981) (1980 Delegation Agreement). Under a November 16, 1981 amendment to the 1980 Delegation Agreement,[1] IEPA also has the authority to amend or revise any PSD permit issued by EPA under the FIP. Thus, all PSD permits issued in Illinois are currently considered Federal permits; and PSD permits issued after April 7, 1980 are enforceable by Illinois and EPA since they were issued under both Illinois and EPA authority.

On September 22, 2020, IEPA submitted to EPA a request to revise the Illinois SIP to establish a SIP-approved PSD program in Illinois. Specifically, IEPA requested that EPA incorporate into the SIP the following: (1) New regulations at Title 35 Illinois Administrative Code (35 Ill. Adm. Code) Part 204, Prevention of Significant Deterioration; (2) amendments to 35 Ill. Adm. Code Part 252, Public Participation in the Air Pollution Control Permit Program; (3) amendments to 35 Ill. Adm. Code Part 203, Major Stationary Source Construction and Modification; and (4) amendments to 35 Ill. Adm. Code Part 211, Definitions and General Provisions. With the exceptions set forth below, IEPA's PSD regulations at 35 Ill. Adm. Code Part 204 and 35 Ill. Adm. Code Part 252 largely mirror the Federal regulations at 40 CFR 52.21 and 40 CFR part 124, respectively. The amendments to 35 Ill. Adm. Code Parts 203 and 211 would update these rules to refer to permitting pursuant to 35 Ill. Adm. Code Part 204, as well as to 40 CFR 52.21. These amendments to 35 Ill. Adm. Code Parts 203 and 211 involve regulations that EPA has previously approved into the Illinois SIP for purposes of other provisions of the CAA (excluding the PSD program). *See* 40 CFR 52.720(c).

IEPA's September 2020 submittal also addressed Illinois' Infrastructure SIP requirements under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J) of the CAA for all of the following NAAQS: 2008 lead, 2010 nitrogen dioxide (NO_2), 1997 ozone, 2008 ozone, 2015 ozone, 1997 particulate matter with aerodynamic diameter less than 2.5 microns ($PM_{2.5}$), 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, and 2010 sulfur dioxide (SO_2). This action does not address the infrastructure SIP portion of IEPA's submittal. EPA plans to address those requirements in a separate action.

On November 5, 2020, IEPA submitted additional information clarifying how it intends to implement specific provisions identified by EPA, and how it plans to correct any typographical errors or omissions that EPA identified in its October 22, 2020 review of IEPA's September 2020 submittal.[2]

Section 110(k)(3) of the CAA states that the Administrator ''shall approve'' a submittal from a state if it ''meets all applicable requirements'' of the CAA. EPA has reviewed 35 Ill. Adm. Code Part 204 and relevant amendments to 35 Ill. Adm. Code Parts 203, 211, and 252, and is proposing to determine that these regulations and amendments meet the requirements of sections 160–169 of the CAA and the implementing regulations at 40 CFR 51.166. In this action, EPA is proposing to approve these regulations and amendments into the Illinois SIP and to codify this approval in the Federal regulations at 40 CFR 52.720. Upon EPA's approval, PSD permits issued by IEPA will be issued under state authority and will no longer be considered Federal actions. EPA is also proposing to transfer to IEPA responsibility for administering existing PSD permits that EPA issued to sources in Illinois pursuant to the FIP, and for processing any PSD permit actions related to such permits.

In approving state NSR rules into SIPs, EPA has a responsibility to ensure that all states properly implement their SIP-approved preconstruction permitting programs. If EPA's proposed approval of IEPA's PSD rules is finalized, EPA would retain appropriate oversight to ensure that permits issued by IEPA are consistent with the requirements of the CAA, Federal regulations, and the SIP.

EPA's authority to oversee NSR permit program implementation is set forth in sections 113 and 167 of the CAA. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other action may be necessary to prevent the construction or modification of a major stationary source that does not ''conform to the requirements of'' the PSD program. Section 113(a)(1) of the CAA provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan. Likewise, section 113(a)(5) of the CAA provides for administrative orders and civil actions whenever EPA finds that a state ''is not acting in compliance with'' any requirement or prohibition of the CAA regarding the construction of new sources or modification of existing sources.

In making judgments as to what constitutes compliance with the CAA and regulations issued thereunder, EPA looks to (among other sources) its prior interpretations regarding those statutory and regulatory requirements and policies for implementing them.

Upon final approval of the submitted PSD program, IEPA would be obligated under 40 CFR 51.166(a)(4) to review the continued adequacy of its approved SIP ''on a periodic basis and within 60 days of such time as information becomes available that an applicable increment is being violated.''

II. Analysis of IEPA's Submittal

A. Procedural Requirements

Under 40 CFR 51.102, EPA has established procedural requirements for states seeking to submit regulations as SIP provisions. These include provisions for public notice, the opportunity to submit written comments and the opportunity to request a public hearing. Illinois EPA's

[1] A copy of this amendment is available in the docket for this action.

[2] A copy of IEPA's submittal is available in the docket for this action.

efforts to fulfill these requirements are documented below.

IEPA filed a regulatory proposal with the Illinois Pollution Control Board (IPCB) for a new 35 Ill. Adm. Code Part 204 and amendments to 35 Ill. Adm. Code Parts 203 and 211 on July 2, 2018. The IPCB held public hearings on these proposed regulations on November 27, 2018 and February 26, 2019.

IEPA published a Notice of Proposed Amendments to 35 Ill. Adm. Code Part 252 in the *Illinois Register* on June 21, 2019. *See* 43 Ill. Reg. 7028. IEPA issued a Notice of Hearing on April 10, 2020, in which it committed to hold a public hearing on May 18, 2020, if a timely request for a public hearing was requested prior to the end of the comment period. IEPA did not receive such a request for a public hearing prior to the end of the public comment period, nor were public comments made during the public comment period. IEPA published a Notice of Adopted Amendments to 35 Ill. Adm. Code Part 252 in the *Illinois Register* on June 26, 2020, with an effective date of June 10, 2020. *See* 44 Ill. Reg. 10873.

On March 20, 2020, the IPCB published a Notice of Proposed Amendments, including new 35 Ill. Adm. Code Part 204 and amendments to 35 Ill. Adm. Code Parts 203 and 211, in the *Illinois Register. See* 44 Ill. Reg. 4109. On August 27, 2020, the IPCB adopted the final 35 Ill. Adm. Code Part 204 and amendments to 35 Ill. Adm. Code Parts 203 and 211 and published them in the *Illinois Register* on September 18, 2020, with an effective date of September 4, 2020. While 35 Ill. Adm. Code Part 204 and the amendments to 35 Ill. Adm. Code Parts 203 and 211 have an effective date of September 4, 2020, those regulations would not take effect in practice until EPA has approved them into the Illinois SIP. This is because Illinois law requires that a state PSD permit may only be issued once the state PSD permit program has been approved as part of the Illinois SIP. *See* 415 ILCS 5/3.363 (definition of ''PSD permit'').

The Federal regulations at 40 CFR 51.103 and 40 CFR part 51, appendix V, set forth the minimum criteria that any SIP submission must meet before EPA is required to act on such submission. These criteria include, among other things: (1) Evidence that the state has adopted the proposed regulations in the state code or body of regulations, including the date of adoption or final issuance as well as the effective date of the regulations, if different from the adoption/issuance date, and (2) evidence that the state followed all of the procedural requirements of the state's laws and constitution in conducting and completing the adoption/issuance of the regulations. Additionally, to be considered complete, each SIP submission must contain certain administrative materials and technical support documentation.

EPA proposes to find that IEPA has satisfied the procedural requirements for a SIP submittal as set forth in 40 CFR 51.102, 51.103 and 40 CFR part 51, appendix V.

B. 35 Ill. Adm. Code Part 204

IEPA's PSD regulation at 35 Ill. Adm. Code Part 204 is intended to mirror the requirements of 40 CFR 52.21, which currently applies in Illinois via a FIP. However, to be approvable into the SIP, IEPA's regulation must meet the requirements of 40 CFR 51.166. Thus, EPA has evaluated IEPA's PSD regulation against the requirements of 40 CFR 51.166.

Under 40 CFR 51.166(a)(7)(iv), each SIP shall use the specific provisions of 40 CFR 51.166(a)(7)(iv)(*a*) through (*f*). EPA will approve deviations from these provisions only if the State specifically demonstrates that the submitted provisions are more stringent than, or at least as stringent, in all respects as the corresponding provisions in 40 CFR 51.166(a)(7)(iv)(*a*) through (*f*). Additionally, 40 CFR 51.166(b) requires that all SIPs shall use the definitions in 40 CFR 51.166(b) for the purposes of 40 CFR 51.166 and that deviations from the wording of those definitions will be approved only if the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definitions in 40 CFR 51.166(b).

EPA proposes to find that IEPA's PSD regulation is more stringent than, or at least as stringent, in all respects as the corresponding provisions in 40 CFR 51.166. While IEPA has submitted provisions that differ in some respects from the provisions in 40 CFR 51.166, we are proposing to find that those differences do not render IEPA's regulation less stringent than the corresponding Federal language at 40 CFR 51.166. We evaluate the substantive differences between 35 Ill. Adm. Code Part 204 and 40 CFR 51.166 in this section.

1. Equipment Replacement Provision (ERP)

In 2003, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) stayed indefinitely the effective date of the NSR ERP, which amended the Routine Maintenance, Repair, and Replacement Exclusion from the NSR requirements in a 2003 final rule. *State of New York* v. *EPA,* No. 03–1380 (Dec. 24, 2003). The stay of the relevant paragraphs was subsequently noted in the affected regulations, including 40 CFR 51.165 (permit requirements for nonattainment areas under subpart D), 51.166 (PSD plan requirements for attainment areas under subpart C), and 52.21 (PSD Federal rules). For example, in 40 CFR 51.166(b)(2)(iii)(*a*), EPA added a note explaining that, as of December 24, 2003, the second sentence of 40 CFR 51.166(b)(2)(b)(2)(iii)(*a*) is stayed indefinitely by court order and that the stayed provisions would become effective immediately if the court terminates the stay.

In a 2006 decision, the court vacated the ERP, concluding that the provision was ''contrary to the plain language of section 111(a)(4) of the [CAA].'' *New York* v. *EPA,* 443 F.3d 880 (D.C. Cir. 2006) (*New York II*). Despite the vacatur, the affected provisions and the notes pertaining to the original stay of the ERP have remained in 40 CFR 51.165, 51.166, and 52.21.

On December 20, 2019, EPA published a proposed rule to revise 40 CFR 51.165, 51.166, and 52.21 by making the following types of changes: Correcting typographical and grammatical errors, removing court-vacated rule language, removing or updating outdated or incorrect cross references, conforming certain provisions to changes contained in the 1990 CAA Amendments, and removing certain outdated exemptions. *See* 84 FR 70092 (2019 Proposed Error Corrections Rule). In this rule, EPA proposed to remove the vacated ERP provisions, consistent with *New York II,* as well as the notes describing the indefinite stay of the various affected provisions. However, EPA noted that there were two components of the ERP rule that are used in conjunction with the definition of ''replacement unit,'' which were not part of the *New York II* decision; and that the definition of ''replacement unit'' cross-referenced or referred to those terms within the ERP. Consequently, in the 2019 Proposed Error Correction Rule, EPA proposed to ''add back'' the criteria to determine ''basic design parameters'' and portions of the definition of ''process unit'' not affected by the vacatur into the definition of ''replacement unit'' in each of the three affected regulations, including 40 CFR 51.166.

EPA has not yet completed the ''Error Corrections'' rulemaking described above. The Administrator signed a final version of this rule on January 4, 2021, but this rule was not published in the **Federal Register** (January 4, 2021

unpublished final error corrections rule).[3] It is currently undergoing review in accordance with the *Regulatory Freeze Pending Review* memorandum that White House Chief of Staff Ronald Klain issued on January 20, 2021.[4] In response to comments on EPA's proposal to retain provisions of the ERP rule incorporated in the ''replacement unit'' provisions, the January 4, 2021 unpublished final error corrections rule contains a decision to remove the ''process unit'' and ''basic design parameters'' provisions. EPA noted, however, in this version that EPA and stakeholders could continue to look to the vacated definitions from the ERP rule to guide their understanding of the definition of ''replacement unit.''

IEPA's rule omits most of the vacated ERP provisions, consistent with *New York II.* However, in order to clarify the term ''replacement unit,'' as defined at 40 CFR 51.166(b)(32), it includes a definition for ''basic design parameters'' for purposes of 40 CFR 51.166(b)(32)(iii). This definition is consistent with the definition of ''basic design parameters'' that was part of the vacated ERP provisions and adds clarity to the State's rule. *See* 35 Ill. Adm. Code 204.620 (Replacement Unit) and 204.620(c) (Basic Design Parameters).

In addition, since the term ''process unit'' is cross-referenced in the definition of ''basic design parameters,'' IEPA has submitted a definition for ''process unit'' that is consistent with the vacated ERP provisions found at 40 CFR 51.166(b)(53) and 51.166(y). *See* 35 Ill. Adm. Code 204.580 (Process Unit). IEPA defines ''process unit'' in 35 Ill. Adm. Code 204.580 as any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an intermediate or completed product. Under IEPA's definition, a process unit may contain more than one emissions unit.

IEPA has also omitted the sentence in 40 CFR 51.166(b)(2)(iii)(*a*), which states that routine maintenance, repair and replacement shall include, but not be limited to, any activities that meet the requirements of the equipment replacement provisions contained in 40 CFR 51.166(y). *See* 35 Ill. Adm. Code 204.490(c)(1).

If EPA ultimately publishes a final rule, like the January 4, 2021 unpublished final error corrections rule, that removes ''basic design parameters'' and ''process unit'' definitions from EPA's regulation, this would not preclude states from electing to include these definitions in their PSD regulations. The January 4, 2021 unpublished final error corrections rule specifies that ''EPA and stakeholders may continue to look at the vacated definitions from the ERP rule to guide their understanding of the definition of 'replacement unit.' '' [5] In response to stakeholder concerns raised during the 2019 Proposed Error Corrections Rule comment period, the January 4, 2021 unpublished final error corrections rule makes clear that EPA will evaluate whether further rulemaking is warranted to restore the definitions of ''basic design parameters'' and ''process unit'' in a manner that is responsive to stakeholder concerns. States may, therefore, include the definitions of ''basic design parameters'' and ''process unit'' in their PSD program regulations at their discretion, but EPA reserves the right to re-evaluate inclusion of these same definitions in the Federal regulations after affording adequate stakeholder input.

EPA proposes to find that IEPA's definitions of ''replacement unit,'' ''basic design parameters,'' and ''process unit,'' as described above, serve to clarify IEPA's rules and are, therefore, approvable. EPA has previously approved SIPs that have addressed the vacated ERP provisions in a manner comparable to IEPA's rule. *See,* for example, 80 FR 67331 (November 2, 2015) (Arizona), 77 FR 65119 (October 25, 2012) (Texas), and 73 FR 51606, 75 FR 71022 (Georgia). Thus, IEPA's rule is consistent with recent EPA regulatory activity related to these definitions.

2. Clean Units and Pollution Control Projects (CU/PCP)

In 2007, EPA removed CU/PCP provisions from 40 CFR 51.165, 51.166, and 52.21, which were vacated by the D.C. Circuit in a June 24, 2005, decision. *New York* v. *EPA,* 413 F.3d 3 (D.C. Cir. 2005) (*New York I*). *See* 72 FR 32526 (June 13, 2007). EPA's action was intended to eliminate the relevant provisions from all of 40 CFR 51.165, 51.166, and 52.21, but EPA only stated that it was removing them from 40 CFR 51.165.

Consistent with *New York I* and EPA's intent in the 2007 action, as corrected in the January 4, 2021 unpublished final error corrections rule, IEPA's definition of ''Net Emissions Increase'' at 35 Ill. Adm. Code 204.550 does not include the language of 40 CFR 51.166(b)(3)(iii)(*c*) providing that an increase or decrease in actual emission is creditable only if the increase or decrease in emissions did not occur at a Clean Unit. Section 35 Ill. Adm. Code 204.550 is otherwise substantively identical to 40 CFR 51.166(b)(3)(iii)(*c*). EPA proposes to find that IEPA's language is at least as stringent as the corresponding Federal language.[6]

3. Greenhouse Gas (GHG) Emissions

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *See Utility Air Regulatory Group* v. *Environmental Protection Agency,* 573 U.S. 302 (2014). The Supreme Court ruled that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source (or major modification thereof) required to obtain a PSD permit. The Court also held that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of BACT. The D.C. Circuit Court of Appeals issued an Amended Judgment in *Coalition for Responsible Regulation Inc.* v. *Environmental Protection Agency,* Nos. 09–1322, 10–073, 10–1092, and 10–1167 (D.C. Cir. April 10, 2015). The Amended Judgment vacated the provisions that would require a stationary source to obtain a PSD permit solely because the source emits or has the potential to emit GHGs above the applicable major source or significant emission threshold. In addition, the D.C. Circuit directed EPA to consider whether additional changes to these regulations were necessary considering the Supreme Court's decision and, if so, to make such changes.

In 2015, EPA amended the PSD regulations at 40 CFR 51.166 and 52.21 to remove portions of those regulations concerning GHGs that were initially promulgated in 2010 but vacated by the D.C. Circuit on April 10, 2015. *See* 80 FR 50199 (August 19, 2015).

In 2016, EPA took additional action to implement the Court decision by proposing to revise the Federal provisions for plantwide applicability limitations (PALs) at 40 CFR 51.166(w) and 52.21(aa) to remove the ability for a source that is only ''major'' for GHGs to obtain a GHG PAL. 81 FR 68110

[3] Available at *https://www.epa.gov/sites/production/files/2021-01/documents/error_corrections_admin.pdf.*

[4] *https://www.epa.gov/nsr/final-error-corrections-rule;* 86 FR 7424 (Jan. 28, 2021).

[5] Page 13, available at *https://www.epa.gov/sites/production/files/2021-01/documents/error_corrections_admin.pdf.*

[6] On January 4, 2021, the Administrator signed a final rule that would revise 40 CFR 51.166(b)(3)(iii)(*c*) and 52.21(b)(3)(iii)(*b*) to remove the remaining vacated CU/PCP provisions as IEPA has done.

(October 3, 2016). EPA proposed this change because a source must be an existing major source to be eligible for a PAL permit and, as discussed above, a source is not subject to PSD permitting requirements based solely on its GHG emissions. EPA also proposed to alter these PAL provisions such that an existing ''anyway source'' could still obtain a GHG PAL, but only to relieve the source from the requirement to address BACT for GHGs when the source triggers PSD permitting for another NSR pollutant.[7]

IEPA has submitted provisions for GHGs that are consistent with these recent Federal court decisions and EPA's regulatory activity as discussed above. *See* 35 Ill. Adm. Code 204.430 (GHGs), 204.490 (Major Modification), 204.510 (Major Stationary Source), 204.660 (Significant), 204.700 (Subject to Regulation) and 204.1600 through 204.1910 (PALs). Although EPA has not yet completed the changes to its regulations proposed in 2016, EPA proposes to find that IEPA's language is at least as stringent as the corresponding Federal language currently in effect.

4. Fugitive Emissions

As part of its reconsideration of the 2008 fugitive emissions rule,[8] on March 3, 2011, EPA stayed the fugitive emissions language in 40 CFR 51.166(b)(2)(v) and 40 CFR 51.166(b)(3)(iii)(*d*) and reverted the regulatory text back to the language that existed prior to the stayed text. 76 FR 17548 (March 30, 2011). However, EPA has not removed the implicated text in 40 CFR 51.166(b)(2)(v), which continues to provide that fugitive emissions will only be counted in determining if a proposed physical change or change in the method of operation would result in a major modification for designated source categories listed in 40 CFR 51.166(b)(1)(iii). Likewise, EPA has not removed the text at 40 CFR 51.166(b)(3)(iii)(*d*), which provides that fugitive emissions will only be counted in determining if a proposed physical or operational change would result in a major modification for sources in designated categories or sources. Instead, EPA added a note at the end of 40 CFR 51.166 stating that 40 CFR 51.166(b)(2)(v) and (b)(3)(iii)(*d*) are stayed indefinitely. *See also* 76 FR 17553 (March 30, 2011).

Given that the above provisions are currently stayed, IEPA has not included the language of 40 CFR 51.166(b)(2)(v) in its definition of ''major modification'' at 35 Ill. Adm. Code 204.490. IEPA is also not including 40 CFR 51.166(b)(3)(iii)(*d*). *See* 35 Ill. Adm. Code 204.550. IEPA would retain the provision in 40 CFR 51.166(b)(1)(iii) which provides that the fugitive emissions of a stationary source shall not be included in determining for any of the purposes of 40 CFR 51.166 whether a source is a major stationary source, unless the source belongs to one of the source categories in 40 CFR 51.166(b)(1)(iii). *See* 35 Ill. Adm. Code 204.510(c).

EPA is proposing to find that IEPA's omission of 40 CFR 51.166(b)(2)(v) and 40 CFR 51.166(b)(3)(iii)(*d*) would appropriately reflect the manner in which 40 CFR 51.166 currently addresses fugitive emissions when determining whether a proposed project at a major stationary source would be a major modification. However, should the stayed provisions be repealed or become effective as a result of EPA's ongoing reconsideration of the 2008 fugitive emissions rule, IEPA may need to revise its SIP consistent with any EPA action revising the regulations.

5. Definitions of ''Best Available Control Technology,'' ''Allowable Emissions,'' ''Federally Enforceable,'' and ''Control Technology Review''

The Federal PSD regulations at 40 CFR 51.166 contain definitions for the terms ''Best available control technology,'' ''Allowable emissions,'' ''Federally enforceable,'' and ''Control technology review'' at 40 CFR 51.166(b)(12), (b)(16), (b)(17), and (j), respectively. As relevant here, these definitions provide that in no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. *See* 40 CFR 51.166(b)(12). Similarly, for purposes of the ''control technology review'' required by 40 CFR 51.166(j)(1), a major stationary source or major modification shall meet each applicable emissions limitation under the SIP and each applicable emission standard and standard of performance under 40 CFR parts 60 and 61. Finally, the terms ''allowable emissions'' and ''Federally enforceable'' are defined to encompass applicable standards as set forth in 40 CFR parts 60 and 61. *See* 51.166(b)(16)(i) and 51.166(b)(17). Emission standards established under 40 CFR part 60 conform to the statutory requirements of section 111 of the CAA while the standards at 40 CFR part 61 conform to the pre-1990 CAA requirements at section 112 of the CAA.

In 1978, EPA promulgated new regulations at 40 CFR part 62 relating to the approval and promulgation of State and Federal plans under sections 111(d) and 129 of the CAA. *See* 43 FR 51393 (November 3, 1978). These regulations, known as emission guidelines for various source categories, are implemented via an approved State plan or a Federal plan for each separate source category.

Similarly, following the 1990 CAA Amendments, EPA began promulgating additional emissions standards under section 112 of the CAA, and codified them at 40 CFR part 63. In some provisions, the CAA itself indicates that all emissions standards adopted under sections 111 and 112 of the CAA must be included in the associated definition. *See, e.g.,* section 169(3) of the CAA (providing that application of BACT must not result in emissions of any pollutants which would exceed the emissions allowed by any applicable standard established pursuant to section 111 or 112 of the CAA).

In order to encompass all potentially applicable standards, IEPA's definitions of ''Allowable emissions'' (35 Ill. Adm. Code 204.230), ''Best available control technology'' (35 Ill. Adm. Code 204.280), ''Federally enforceable'' (35 Ill. Adm. Code 204.400), and ''Control technology review'' (35 Ill. Adm. Code 204.1100) would encompass applicable standards set forth in 40 CFR parts 62 and 63, in addition to those found at 40 CFR parts 60 and 61. IEPA's inclusion of 40 CFR part 62, in addition to 40 CFR parts 60, 61 and 63, in the definitions of ''Allowable emissions,'' ''Best available control technology,'' ''Federally enforceable,'' and ''Control technology review'' is acceptable because the respective State definitions would be at least as stringent as the corresponding Federal language.

While the January 4, 2021 unpublished final error corrections rule added 40 CFR part 63 to the definition of ''best available control technology,'' but not ''federally enforceable'' and ''allowable emissions,'' EPA believes the revisions in this SIP are appropriate. Also in that rulemaking, EPA opted not to add a reference to part 62 in any of the relevant definitions in the NSR regulations. Given stakeholder feedback received on the 2019 Proposed Error Corrections Rule,[9] EPA opted to forgo revisions similar to those in this SIP in order to provide for adequate public comment for such a revision to the Federal regulations. EPA did, however, add a reference to part 63 in the definition of ''best available control

[7] An ''anyway source'' in this context is a facility or emission source that is otherwise required to obtain a PSD permit based on its emissions of one or more regulated NSR pollutants other than GHG.

[8] *See* 73 FR 77881 (December 19, 2008).

[9] *See* 84 FR 70092 (December 20, 2019).

technology'' in the January 4, 2021 unpublished final error corrections rule on the grounds that ''the statute expressly requires the inclusion of emissions standards under CAA section 112 in that definition (which includes emissions limitations contained in both 40 CFR parts 61 and 63).'' Stakeholders have an opportunity to submit comments on this change to IEPA's regulations. Should EPA make an analogous revision to the Federal regulations, it will similarly allow for adequate stakeholder input on the addition of parts 62 and 63 to several definitions in its PSD regulations.

6. Significant Monitoring Concentrations (SMC)

IEPA is excluding the exemption from preconstruction monitoring for fluorides, total reduced sulfur, hydrogen sulfide, and reduced sulfur compounds as set forth in 40 CFR 51.166(i)(5)(i)(*h*) through (*k*). The preconstruction monitoring obligation for these pollutants is not mandatory but based on the judgment of the reviewing authority. *See* 40 CFR 51.166(m)(1)(ii). Exercising the discretion afforded to the reviewing authority to determine whether preconstruction monitoring is necessary for these pollutants, IEPA has elected not to apply this requirement to these pollutants. Thus, an exemption from preconstruction monitoring for these pollutants is not necessary.

EPA proposes to find that IEPA's omission of the SMCs in 40 CFR 51.166(i)(5)(i)(*h*) through (*k*) is consistent with the discretion afforded to the reviewing authority under 40 CFR 51.166(i)(5) and 51.166(m)(1)(ii), and is therefore approvable.

7. Major Source Threshold for Municipal Incinerators

The 1990 CAA Amendments amended the definition of ''major emitting facility'' at section 169(1) by striking out the words ''two hundred and'' as those words appeared in the phrase ''municipal incinerators capable of charging more than two hundred and fifty tons of refuse per day.'' This amendment had the effect of lowering (from 250 tons of refuse per day to 50 tons of refuse per day) the charging capacity threshold for a municipal incinerator, thereby providing that such a source would qualify as a major emitting facility if it also has the potential to emit at least 100 tons per year of any regulated NSR pollutant.

IEPA's regulation incorporates this change at 35 Ill. Adm. Code 204.510(a)(1)(I) and (c)(8). This approach is consistent with EPA's NSR Error Corrections rulemaking that would make similar changes to 40 CFR 51.165, 51.166, 52.21, and appendix S to 40 CFR part 51 by lowering the charging capacity threshold for a municipal incinerator from 250 tons of refuse per day to 50 tons of refuse per day. This proposed change remains in the January 4, 2021 version of the error corrections rule that has been signed by the Administrator.[10]

8. Major Source Threshold for Ozone Depleting Substances (ODS)

Given ODS are regulated by title VI of the CAA, ODS are ''subject to regulation'' for purposes of PSD applicability. *See* 42 U.S.C. 7671a (listing those ozone depleting substances subject to regulation).

IEPA has submitted a Significant Emissions Rate (SER) for ODS of 100 tons per year (tpy). This SER is consistent with EPA precedent and guidance.[11] For example, EPA proposed a 100 tpy SER for ODS in 1996. 61 FR 38250, 38307 (July 23, 1996). Since then, EPA has supported not requiring PSD permitting for ODS emissions increases less than 100 tpy. For example, EPA approved a 100 tpy SER for the State of Washington's PSD program, WAC l70–400–720/173–400–720(4)(b)(iii)(B). *See* 80 FR 23725 (April 29, 2015).[12]

ODS sources comprise widely available commercial and household activities such as refrigeration, air conditioning, and fire suppression equipment. 61 FR 38307. Requiring PSD permitting for *any* potential incidental ODS losses from such activities may substantially constrain IEPA's resources with little or no environmental benefit. It would also pose a significant cost burden to facility owners and operators who must prepare a complex PSD application for *any* potential incidental releases of ODS from routine activities.

For the above reasons, EPA is proposing to approve IEPA's SER for ODS of 100 tpy.

9. Baseline Actual Emissions

Under 40 CFR 51.166(b)(47) and 52.21(b)(48), an existing emissions unit, other than an existing electric generating unit, may select any 24-month period during a 10-year look back period immediately preceding the change to calculate its ''baseline actual emissions'' for each contemporaneous event. The baseline actual emissions for each emissions unit must be adjusted to reflect the ''current'' emission limits that apply to each emission unit. In its 2002 rulemaking, EPA stated that the term ''currently,'' as used at 40 CFR 52.21(b)(48)(ii)(*c*) and 51.166(b)(47)(ii)(*c*) ''in the context of contemporaneous emissions change refers to limitations on emissions and source operation that existed just prior to the date of the contemporaneous change.'' 67 FR 80186, 80197 (December 31, 2002). Consistent with this 2002 EPA interpretation, IEPA has proposed to clarify the meaning of the term ''currently'' in the context of its definition of ''baseline actual emissions.'' Specifically, 35 Ill. Adm. Code 204.240(b)(3) provides that '' 'Currently' in the context of a contemporaneous emissions change refers to limitations on emissions and source operation that existed just prior to the date of the contemporaneous change.''

EPA proposes to find that IEPA's language at 35 Ill. Adm. Code 204.240(b)(3) is approvable because it serves to clarify the meaning of a term that is not currently defined in the Federal regulations, and is consistent with EPA's interpretation of that term as used at 40 CFR 51.166(b)(47)(ii)(*c*).

10. Net Emissions Increase When an Existing Emissions Unit Is Being Replaced

The Federal regulations at 40 CFR 51.166 use the term ''replacement unit'' on three separate occasions: At § 51.166(b)(3)(vii) (any ''replacement unit'' that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days); at § 51.166(b)(7)(ii) (a ''replacement unit,'' as defined in 40 CFR 51.166(b)(32), is an existing emissions unit); and at § 51.166(b)(32) (''replacement unit'' means an emissions unit for which all the criteria listed in 40 CFR 51.166(b)(32)(i) through (iv) are met).

[10] *See* January 4, 2021 unpublished final error corrections rule at *https://www.epa.gov/sites/production/files/2021-01/documents/error_corrections_admin.pdf.*

[11] See *Letter from John Seitz, Director, Office of Air Quality Planning and Standards, to Mr. Gustave Von Bodungen, Assistant Secretary, State of Louisiana,* dated February 24, 1998; and *letter from John Seitz, Director; Office of Air Quality Planning and Standards, to Mr. Kevin Tubbs, Director, Environmental Technology American Standard,* dated March 19, 1998.

[12] EPA has approved at least four other PSD SIPs with ODS SERs, including SIPs for Clark County, Nevada (*see* Section 12.2.2(uu)(1) (100 tpy ODS threshold, last approved at 79 FR 62350 (10/17/2014), 40 CFR 52.1470); Indiana (*see* 326 Ind. Admin. Code 2–2–1(ww)(1)(V) (100 tpy ODS threshold, last approved at 76 FR 59899 (9/28/2011), 40 CFR 52.770); Kentucky (*see* 401 KAR 51:001, sec. 1(218)(a) (100 tpy ODS threshold, last approved at 79 FR 65143 (11/3/2014), 40 CFR 52.920); and Tennessee (*see* Rule 1200–03–09–.01(4)(b)(24)(i)(XIV) (40 tpy ODS threshold, last approved at 83 FR 48248 (9/24/2018), 40 CFR 52.2220).

In its regulations, IEPA has replaced the term ''replacement unit'' as set forth in 40 CFR 51.166(b)(3)(vii) with the phrase ''[a]ny emissions unit that replaces an existing emissions unit.'' *See* Ill. Adm. Code 204.550. Specifically, IEPA has replaced the pertinent language in 40 CFR 51.166(b)(3)(vii) with language that would require that any emissions unit that replaces an existing emissions unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days. IEPA explains that its language should be interpreted consistent with similar language that EPA has previously approved in other SIPs, including language approved into the Arizona SIP at A.A.C. R18–2–101(87)(g) (providing that any emissions unit that replaces an existing emissions unit and that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.). *See* 80 FR 67319, 67334 (November 2, 2015).[13]

Paragraph 40 CFR 51.166(b)(3)(vii) addresses when an emissions increase occurs in the specific situation where an existing emissions unit is being replaced. Thus, the term ''replacement unit'' as used in 40 CFR 51.166(b)(3)(vii) is used in the context of determining when an emissions increase occurs when an emissions unit replaces an existing emissions unit, considering a ''reasonable shakedown period.'' Under 40 CFR 51.166(b)(7)(ii) and (32), any new emissions unit that meets certain criteria is considered an existing emissions unit when calculating the emissions increase from a project, allowing the use of projected actual emissions in lieu of the unit's potential to emit.

IEPA's language makes a reasonable distinction between the various uses of the term ''replacement unit'' by clarifying that the context of 40 CFR 51.166(b)(3)(vii) differs from the context of 40 CFR 51.166(b)(7)(ii) and (32). Specifically, IEPA's language would clarify that, for purposes of determining when a unit that requires shakedown becomes operational, as provided by 40 CFR 51.166(b)(3)(vii), the determination of the appropriate shakedown period need not be limited to those circumstances where the emissions unit meets the criteria for a ''replacement unit'' under 40 CFR 51.166(b)(7)(ii) and (32). EPA proposes to find that IEPA's language is approvable.

11. Potential To Emit

In the definition of ''potential to emit'' at 40 CFR 51.166(b)(4), the second sentence requires that any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. IEPA has proposed to replace the phrase ''federally enforceable'' as used in 40 CFR 51.166(b)(4) with ''federally enforceable or legally and practicably enforceable by a state or local air pollution control agency.'' *See* 35 Ill. Adm. Code 204.560. IEPA's definition is consistent with past court decisions and EPA guidance [14] that establish that the term ''potential to emit'' must encompass all legally enforceable emission limitations that restrict a source's emissions. *National Mining Association* v. *EPA,* 313 U.S. App. DC 363, 59 F.3d 1351 (DC Cir. 1995); *Chemical Manufacturers Association, et. al. v EPA,* No. 89–1514 (DC Cir. September 15, 1995). EPA proposes to approve IEPA's version of this provision.

12. Hazardous Air Pollutants (HAPs)

Section 112(b)(6) of the CAA expressly prohibits the application of PSD permitting requirements to pollutants listed under section 112 of the CAA. *See* 42 U.S.C. 7412(b)(6). Consistent with this statutory prohibition, 40 CFR 51.166(b)(49)(v) provides that the term ''regulated NSR pollutant'' shall not include HAPs either listed in section 112 of the CAA, or added to the list pursuant to section 112(b)(2) of the CAA, and which have not been delisted pursuant to section 112(b)(3) of the CAA, unless the listed HAP is also regulated as a constituent or precursor of a criteria pollutant listed under section 108 of the CAA.

To ensure the prohibition in 40 CFR 51.166(b)(49)(v) encompasses all substances listed in section 112 of the CAA, IEPA has proposed in its PSD regulation that the prohibition in 40 CFR 51.166(b)(49)(v) shall also apply to HAPs added to the list pursuant to section l12(b)(3) of the CAA and hazardous substances listed under section l12(r)(3) for purposes of risk management planning and otherwise not delisted pursuant to section ll2(r) of the CAA, unless such pollutant is otherwise addressed as a regulated NSR pollutant. *See* 35 Ill. Adm. Code 204.610(e). HAP compounds would continue to be addressed when they are a component of another pollutant that is a regulated NSR pollutant, *e.g.,* volatile organic compounds or particulate matter. However, they would not be regulated individually as HAPs.

EPA proposes to approve IEPA's proposed revision to the regulatory language in 40 CFR 51.166(b)(49)(v) because it is consistent with our interpretation of section 112(b)(6) of the CAA. Indeed, EPA has approved similar changes in other PSD SIPs. *See, e.g.,* 73 FR 23957 (May 1, 2008) (Alabama PSD and Nonattainment NSR).

13. Nonroad Engines

Under 40 CFR 51.166(b)(5), a ''stationary source'' means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant. Section 302(z) of the CAA defines ''stationary source'' to exclude those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216 of the CAA. 42 U.S.C. 7602(z). Consistent with this statutory exception, IEPA has expressly excluded from the definition of ''stationary source'' in 40 CFR 51.166(b)(5) those ''emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216 of the CAA. *See* 35 Ill. Adm. Code 204.690. IEPA's exclusion of ''nonroad engines'' from the definition of ''stationary source'' is approvable.

14. Baseline Concentration

The Federal regulations at 40 CFR 51.166(b)(13) define ''baseline concentration'' as that ambient concentration level that exists in the baseline area ''at the time of the applicable minor source baseline date.'' [15] The ''minor source baseline date'' is defined at 40 CFR 51.166(b)(14)(ii). A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include the items in 40 CFR 51.166(b)(13)(i)(*a*) and (*b*). Under 40 CFR 51.166(b)(13)(ii), the following will

[13] EPA notes that to be grammatically consistent with these previous approvals, IEPA's language should more-appropriately be read as: ''Any emissions unit that replaces an existing emissions unit *and* that requires shakedown . . . .'' However, we do not believe such grammatical inconsistency renders this provision ambiguous or unclear.

[14] See Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Office Addressees, Release of interim Policy on Federal Enforceability of Limitations on Potential to Emit, January 22, 1996.

[15] The baseline concentration is relevant when determining the amount of allowable PSD increment that is available for a project.

not be included in the baseline concentration and will affect the applicable maximum allowable increase(s): ''actual emissions'' from any major stationary source on which construction commenced after the major source baseline date (as defined at 40 CFR 51.166(b)(14)(i)); and actual emissions increases and decreases at any stationary source occurring after the minor source baseline date. *See* 40 CFR 51.166(b)(13)(ii)(*a*) and (*b*).

IEPA has proposed to revise the language in 40 CFR 51.166(b)(13)(i)(*a*) to specify that for a major stationary source in existence on the major source baseline date, ''actual emissions'' means increases or decreases in actual emissions resulting from construction commencing after the major source baseline date. *See* 35 Ill. Adm. Code 204.260(b)(1). IEPA's language would serve to clarify that, for major modifications occuring after the major source baseline date, emissions increases or decreases would consume or expand, respectively, the allowable PSD increment.

IEPA's interpretation of ''actual emissions'' in the context of 40 CFR 51.166(b)(13)(i)(*a*) is consistent with current EPA precedent and guidance. *See, e.g., In re Northern Michigan University Ripley Heating Plant,* 14 E.A.D. 314 (the legislative history suggests that Congress intended its definition of ''baseline concentration'' to be interpreted in such a way that *changes* in emissions would be the focus of the increment calculus for replaced (and by implication, modified) sources). Therefore, IEPA's regulatory language is approvable.

15. Major Emissions Unit

IEPA has not included in its PSD regulation the portion of the definition of ''major emissions unit'' for PALs as set forth in 40 CFR 51.166(w)(2)(iv)(*b*) because this provision solely deals with nonattainment areas. *See* 35 Ill. Adm. Code 204.1680. At the time EPA initially promulgated PALs, EPA included one set of regulatory language for both PSD and nonattainment area permitting. 67 FR 80186 (December 31, 2002). EPA utilized the same PAL language for both regulatory programs. However, EPA has since promulgated distinct sets of regulations for PSD and nonattainment areas at 40 CFR 51.166 or 52.21 (for PSD) and 40 CFR 51.165 (for nonattainment areas). The provision at 40 CFR 51.166(w)(2)(iv)(*b*) applies to nonattainment pollutants in nonattainment areas and is appropriately addressed in regulations developed under 40 CFR 51.165 (*i.e.,* Illinois' regulations at 35 Ill. Adm. Code 203). EPA, therefore, proposes to approve IEPA's exclusion of 40 CFR 51.166(w)(2)(iv)(*b*) from its PSD regulations. IEPA's exclusion is consistent with 40 CFR 51.166(i)(2), which provides that the SIP may provide that the substantive requirements of PSD do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under section 107 of the CAA. IEPA has included this provision at 35 Ill. Adm. Code 204.860(b).

16. Recent EPA Rulemaking Activity

On November 24, 2020, EPA issued a Project Emissions Accounting final rule that clarified that both emissions increases and decreases from a major modification at an existing stationary source can be considered during the first step of the two-step NSR applicability test (termed ''project emissions accounting''). 85 FR 74890. Specifically, as relevant here, EPA revised 40 CFR 51.166(a)(7)(iv)(*f*) and 40 CFR 52.21(a)(2)(iv)(*f*), which had stated that a significant emissions increase of a regulated NSR pollutant is projected to occur if the ''*sum of the emissions increases for each emissions unit*'' for each type of emissions unit equals or exceeds the significant emissions rate for that pollutant. The final rule replaces the phrase ''*sum of the emissions increases for each emissions unit*'' in these provisions with the phrase ''sum of the difference for all emissions units.'' EPA also added new language at 40 CFR 51.166(a)(7)(iv)(*g*) and 40 CFR 52.21(a)(2)(iv)(*g*), respectively, stating that the phrase ''sum of the difference'' ''shall include both increases and decreases in emissions.'' EPA concluded that the revisions to 40 CFR 51.166(a)(iv)(f) do not constitute minimum program elements that must be included in a PSD program for such program to be approvable into the SIP. 85 FR 74904. Thus, IEPA's rule is approvable without this language.

17. Other Substantive Differences Compared to 40 CFR 51.166

IEPA's regulation omits the clause ''except the activities of any vessel'' from the definition of ''Building, Structure, Facility or Installation'' at 40 CFR 51.166(b)(6)(i). *See* 35 Ill. Adm. Code 204.290. In 1984, the D.C. Circuit vacated this exemption and directed EPA to perform additional review consistent with its opinion. *Natural Resources Defense Council, Inc.* v. *EPA,* 725 F.2d 761, 771 (D.C. Cir. 1984). While EPA has not removed the vacated language from the definition of ''Building, Structure, Facility or Installation,'' the vacatur leaves no legally effective regulation that would exempt the activities of any vessel from consideration for PSD permitting purposes.[16] IEPA's omission of the phrase ''except the activities of any vessel'' from the definition of ''Building, Structure, Facility or Installation'' at 40 CFR 51.166(b)(6)(i) is consistent with EPA's interpretation of the D.C. Circuit's vacatur.

IEPA has proposed to omit 40 CFR 51.166(b)(2)(iii)(*k*), which would exempt ''[t]he reactivation of a very clean coal-fired electric utility steam generating unit'' from the definition of a ''physical change or change in the method of operation.'' IEPA has also omitted the corresponding definition of ''Reactivation of a very clean coal-fired electric utility steam generating unit'' at 40 CFR 51.166(b)(37). IEPA states that there are no existing utility units in Illinois to which these provisions could apply. Notwithstanding whether subject sources currently exist in Illinois, IEPA's omission of 40 CFR 51.166(b)(2)(iii)(*k*) and 40 CFR 51.166(b)(37) would mean that such sources would no longer be exempt from PSD program requirements. EPA proposes to find that IEPA's language is approvable.

IEPA has omitted the transitional requirement from 40 CFR 51.166(w)(l5)(ii), which would have given IEPA authority to supersede any PAL which was established by the Administrator prior to the date of approval of the SIP with a PAL that complies with the requirements of 40 CFR 51.166(w)(w)(1) through (15). Given that EPA has not issued a PAL in Illinois, this language would be unnecessary.

IEPA's regulation does not include a reference to 40 CFR 51.166(s) in the ''source obligation'' requirement in 40 CFR 51.166(r)(2). The provision at 40 CFR 51.166(r)(2) requires that if a source relaxes a prior enforceable limitation that allowed the source to be regulated as a ''minor'' rather than a major stationary source, such source would become subject to the permit requirements for a major stationary source at 40 CFR 51.166(j) through (s) as if it were a new source. However, 40 CFR 51.166(s) contains discretionary provisions concerning the application of

[16] See Letter from Charles J. Sheehan, Regional Counsel, EPA Region 6, to Mr. Michael Cathey, Managing Director, El Paso Energy Bridge Gulf of Mexico, October 28, 2003.

innovative control technology; thus, 40 CFR 51.166(s) should not have been included in the reference to mandatory permit elements. This revision is consistent with the January 4, 2021 unpublished final error corrections rule which corrected the source obligation requirement at 40 CFR 51.166(r)(2) by removing the reference to paragraph (s) and replacing it with a reference to paragraph (r).

IEPA's regulation does not include the second sentence in the definition of ''Complete'' at 40 CFR 51.166(b)(22), which provides that ''Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.'' *See* 35 Ill. Adm. Code 204.330. EPA proposes to find that this omission does not impact the relative stringency of IEPA's regulation with respect to 40 CFR 51.166. On November 5, 2020, IEPA confirmed EPA's interpretation that 35 Ill. Adm. Code 204.330 does not foreclose IEPA from requesting additional information from the applicant should it determine, after initially deeming the application ''complete,'' that additional information was necessary to process the application.

IEPA's November 5, 2020, clarification letter identified various typographical errors or inadvertent omissions in IEPA's regulation. IEPA stated that until it undertakes rulemaking to correct those errors or omissions, it intends to implement those provisions consistent with the corresponding Federal rule language at 40 CFR part 51. IEPA identified the following provisions, along with how it interprets those provisions: (1) In 35 Ill. Adm. Code 204.490(c)(3), ''42 U.S.C. 7435'' means ''42 U.S.C. 7425''; (2) in 35 Ill. Adm. Code 204.620(c)(4), the reference to 35 Ill. Adm. Code 204.620(c)(2) and (c)(3) refers to 35 Ill. Adm. Code 204.620(c)(l) and (2), consistent with 40 CFR 51.l66(y)(2)(iv); (3) in 35 Ill. Adm. Code 204.930(c)(4), the phrase ''this Section'' means ''this Part,'' consistent with 40 CFR 51.166(g)(3)(iv); (4) in 35 Ill. Adm. Code 204.1500(b), the phrase ''with the consent of the Governor'' means ''with the consent of the Governor(s) of other affected State(s),'' consistent with 40 CFR 51.166(s)(2); and (5) in 35 Ill. Adm. Code 204.420(a)(2)(A), ''40 CFR 52'' means ''40 CFR 51 and 52,'' consistent with 40 CFR 51.100(ii)(2)(i). EPA proposes to approve each of the provisions that IEPA has identified as containing typographical errors or inadvertent omissions because IEPA will implement those provisions consistent with the corresponding Federal language. In addition, many of the typographical errors and omissions do not impact the relative stringency of IEPA's regulation compared to 40 CFR 51.166.

C. Amendments to 35 Ill. Adm. Code Part 252 (Public Participation)

On September 22, 2020, EPA submitted a request to incorporate certain amendments to 35 Ill. Adm. Code Part 252 into the Illinois SIP. The amendments to 35 Ill. Adm. Code Part 252 are intended to accommodate IEPA's new PSD program at 35 Ill. Adm. Code Part 204, in compliance with 40 CFR 51.166(q). IEPA specified in 35 Ill. Adm. Code 204.1320 that the public participation procedures at 35 Ill. Adm. Code Part 252 must be followed. EPA has previously approved the procedures at 35 Ill. Adm. Code Part 252 for IEPA's minor new source review and nonattainment new source review permitting programs. *See* 50 FR 38803 (September 25, 1985).

On March 3, 2021, IEPA submitted a request to withdraw a portion of the submitted amendments, 35 Ill. Adm. Code 252.301, from approval into the PSD SIP. This provision applies to EPA's review of title V permits issued by IEPA. Since this provision is not a required element under 40 CFR 51.166, EPA is proposing to grant IEPA's request.

IEPA's public participation requirements for the PSD program are based on the Federal requirements contained in 40 CFR 51.166(q) and 40 CFR part 124. Under 35 Ill. Adm. Code Part 252, as amended, IEPA must, among other things, provide an opportunity for public comment and hearing, make relevant information regarding a PSD permit application and IEPA's preliminary determination on an application available to the public, send a copy of the notice of public comment to the applicant, EPA, and other identified entities, consider all timely public comments in issuing a final determination, and provide notice of the final determination to specified entities.

EPA is proposing to find that IEPA's amendments to 35 Ill. Adm. Code Part 252 meet the CAA requirements for public participation for the PSD program as set forth in 40 CFR 51.161 and 51.166(q), and would be substantially identical to the public participation requirements in 40 CFR part 124 that are pertinent to the currently-applicable FIP incorporating 40 CFR 52.21. EPA therefore proposes to approve the amendments as a revision to the Illinois SIP. EPA is not including in its proposed approval 35 Ill. Adm. Code 252.301 because IEPA withdrew this provision from its submittal, and it is not a required element of a PSD SIP, as discussed above.

D. Amendments to 35 Ill. Adm. Code Part 211 (Definitions and General Provisions)

IEPA has amended 35 Ill. Adm. Code Part 211 to update certain provisions in this regulation such that they refer to permits issued under 40 CPR 52.21 or 35 Ill. Adm. Code Part 204, Illinois' new regulation for a state PSD permitting program. Specifically, IEPA has submitted amendments to 35 Ill. Adm. Code 211.7150(b) and (d).

The amendments to 35 Ill. Adm. Code 211.7150(b) and (d), as described above, are approvable because PSD permits in Illinois are currently issued under 40 CFR 52.21. Following approval of 35 Ill. Adm. Code Part 204, IEPA will issue PSD permits under this new state regulation; but permits previously issued under 40 CFR 52.21 will continue to be effective unless rescinded or otherwise rendered invalid.

On November 5, 2020, IEPA clarified that the provision in 35 Ill. Adm. Code 204.200 that refers to the definitions in 35 Ill. Adm. Code Part 211 for those terms that are not specifically defined in 35 Ill. Adm. Code Part 204 applies to those terms in 35 Ill. Adm. Code Part 211 that EPA has previously approved into the Illinois SIP. EPA's proposed approval of 35 Ill. Adm. Code Parts 204 and 211 does not apply to any terms and definitions in 35 Ill. Adm. Code Part 211 that EPA has not previously approved into the Illinois SIP.

E. Amendments to 35 Ill. Adm. Code Part 203 (Major Stationary Source Construction and Modification)

IEPA has amended 35 Ill. Adm. Code Part 203, which contains Illinois' nonattainment NSR rules. The amendments update the provisions in this regulation that refer to permits issued under 40 CFR 52.21 to refer to permits issued under 40 CFR 52.21 or 35 Ill. Adm. Code Part 204, Illinois' new regulation for a state PSD permitting program. Specifically, IEPA has submitted amendments to 35 Ill. Adm. Code 203.207(a), (c)(2), (c)(3), (c)(5), (c)(6), (e), and (f).

The amendments to 35 Ill. Adm. Code 203.207(a), (c)(2), (c)(3), (c)(5), (c)(6), (e), and (f) as described above are approvable because PSD permits in Illinois are currently issued under 40 CFR 52.21. Following approval of 35 Ill. Adm. Code Part 204, IEPA will issue PSD permits under this new state regulation but permits previously issued

under 40 CFR 52.21 will continue to be effective unless legally rescinded or otherwise rendered invalid.

F. Personnel, Funding, and Authority

Section 110(a)(2)(E)(i) of the CAA requires states to have adequate personnel, funding, and authority under state law to carry out a SIP. IEPA has authority under state law to issue PSD permits. Specifically, sections 9.l(d)(l) and (2) of the Illinois Environmental Policy Act (Illinois Act), 415 ILCS 5/9.l(d)(l) and (2), specify that no person shall violate any provisions of sections 111, 112, 165, or 173 of the CAA, as now or hereafter amended, or the implementing Federal regulations; or construct, install, modify, or operate any equipment, building, facility, source or installation which is subject to regulation under sections 111, 112, 165, or 173 of the CAA, as now or hereafter amended, except in compliance with the requirements of such sections and Federal regulations adopted pursuant thereto. The Illinois Act further specifies that no such action shall be undertaken without a permit granted by IEPA whenever a permit is required pursuant to the Illinois Act or the implementing state regulations, or section 111, 112, 165, or 173 of the CAA or implementing Federal regulations, or in violation of any conditions imposed by such permit. Consistent with the Illinois Act, 35 Ill. Adm. Code 204.820 and 204.850 would require that a source may construct or operate any source or modification subject to PSD permitting only after obtaining an approval to construct or PSD permit. IEPA would have the ability to rescind such PSD permit under 35 Ill. Adm. Code 204.1340.

With respect to personnel and funding, as already discussed, IEPA has been issuing PSD permits under a delegation agreement with EPA since 1980. The staff of engineers and air quality modelers who supported IEPA in its issuance of PSD permits under a delegation agreement with EPA will continue to support IEPA's issuance of PSD permits under a SIP-approved PSD program. IEPA explained in its submittal that it currently has nine full time construction permit engineers that perform construction permit activities, and that it has an adequate revenue stream from permit fees to support such activities. EPA therefore proposes to find that IEPA has adequate personnel, funding, and authority to implement the PSD program in Illinois.

III. What action is EPA taking?

A. Scope of Proposed Action

EPA is proposing to approve revisions to the Illinois SIP that IEPA submitted on September 22, 2020. These revisions implement the PSD preconstruction permitting regulations for certain new or modified sources in attainment and unclassifiable areas. Currently, the PSD program in Illinois is operated under the FIP incorporating 40 CFR 52.21. EPA is proposing to approve IEPA's PSD regulations contained in 35 Ill. Adm. Code Parts 204 and 252 to apply statewide, except in Indian reservations. EPA is excluding from the scope of this proposed approval of IEPA's PSD program all Indian reservations in the State, and any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. For the facilities in these geographic areas, the PSD FIP incorporating 40 CFR 52.21 will continue to apply and EPA will retain responsibility for issuing permits affecting such sources.

B. Rules Proposed for Approval and Incorporation by Reference Into the SIP

EPA proposes to approve into the Illinois SIP at 40 CFR 52.720, the following regulations: 35 Ill. Adm. Code 203.207 ''Major Modification of a Source,'' 35 Ill. Adm. Code Part 204 ''Prevention of Significant Deterioration,'' and 35 Ill. Adm. Code 211.7150 ''Volatile Organic Material (VOM) or Volatile Organic Compound (VOC)'', effective September 4, 2020; and 35 Ill. Adm. Code Part 252 ''Public Participation in the Air Pollution Control Program,'' except 35 Ill. Adm. Code 252.301, effective June 10, 2020.

C. Transfer of Authority for Existing EPA-Issued PSD Permits

In a letter dated September 30, 2020, IEPA requested approval to exercise its authority to fully administer the PSD program with respect to those sources under IEPA's permitting jurisdiction that have existing PSD permits issued by EPA. This would include authority to conduct general administration of these existing permits, authority to process and issue any subsequent PSD permit actions relating to such permits (*e.g.,* modifications, amendments, or revisions of any nature), and authority to enforce such permits. Since April 7, 1980, IEPA has had full delegation to implement the PSD permitting program under the FIP. 46 FR 9580 (January 29, 1981). Thus, PSD permits issued by IEPA on or after April 7, 1980 were issued under both state and EPA authority.

Prior to delegation of the PSD permitting program to IEPA on April 7, 1980, EPA issued several PSD permits for sources in Illinois.[17] In an April 14, 1982 amendment to the terms of the 1980 delegation agreement, EPA delegated to IEPA the authority to amend or to revise any permits that had been previously issued by EPA. For those permits issued solely by EPA prior to delegation (on or before April 7, 1980), IEPA has demonstrated adequate authority to enforce and modify these permits.

Concurrent with our approval of IEPA's PSD program into the SIP, we are proposing to transfer to IEPA authority to modify, amend or revise, and enforce PSD permits that EPA previously issued to sources under IEPA's permitting jurisdiction.

IV. Incorporation by Reference

In this rule, 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 the Illinois PSD regulations discussed in section III.B of this preamble. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

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 CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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 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.*);

[17] EPA issued at least 18 such permits; however, some of the affected facilities may no longer exist. The full listing of these facilities is available in the docket for this action.

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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: April 22, 2021.

Cheryl Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 2021–08820 Filed 4–27–21; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–156; RM–11901; DA 21–437; FR ID 22304]

Television Broadcasting Services Boise, Idaho

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Sinclair Boise Licensee, LLC (Petitioner), the licensee of KBOI–TV (NBC), channel 9, Boise, Idaho. The Petitioner requests the substitution of channel 20 for channel 9 at Boise, Idaho in the DTV Table of Allotments.

DATES: Comments must be filed on or before May 28, 2021 and reply comments on or before June 14, 2021.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Paul A. Cicelski, Esq., Lerman Senter, PLLC, 2001 L Street NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647; or Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov*.

SUPPLEMENTARY INFORMATION: In support of its channel substitution request, the Petitioner states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers. Petitioner further states that KBOI–TV has received numerous complaints from viewers unable to receive that Station's over-the-air signal, despite being able to receive signals from other stations, and that its channel substitution proposal will result in more effective building penetration for indoor antenna reception. In its Amended Engineering Exhibit, the Petitioner demonstrated that while the noise limited contour of the proposed channel 20 facility does not completely encompass the licensed channel 9 contour, only 180 persons in two small loss areas are predicted to lose service from KBOI–TV. The Commission, however, considers such a loss to be *de minimis*.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 21–156; RM–11901; DA 21–437, adopted April 16, 2021, and released April 16, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law. 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—Radio Broadcast Service

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

§ 73.622 [Amended]

■ 2. In § 73.622 in paragraph (i), amend the Post-Transition Table of DTV Allotments under Idaho by revising the entry for Boise to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *