The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211, which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 17, 2012.

Ervin J. Barchenger,

Regional Director, Mid-Continent Region.

For the reasons set out in the preamble, 30 CFR part 943 is amended as set forth below:

PART 943—TEXAS

■ 1. The authority citation for Part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 943.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * * *	
February 9, 2012	September 19, 2012	16 TAC 12.108(b)(1)–(3)

[FR Doc. 2012–23075 Filed 9–18–12; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0555; FRL–9728–1]

Approval and Promulgation of Implementation Plans; Florida: New Source Review—Prevention of Significant Deterioration; Fine Particulate Matter ($PM_{2.5}$)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve changes to the Florida State Implementation Plan (SIP), submitted by the Florida Department of Environmental Protection (FDEP) to EPA on March 15, 2012. The March 15, 2012, SIP revision modifies Florida's New Source Review (NSR) Prevention of Significant Deterioration (PSD) permitting regulations to adopt, into the Florida SIP, federal NSR PSD requirements for the fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) as promulgated in EPA's 2008 NSR $PM_{2.5}$ Implementation Rule and the 2010 $PM_{2.5}$ PSD Increment, Significant Impact

Levels (SILs) and Significant Monitoring Concentration (SMC) Rule. EPA is approving portions of Florida's March 15, 2012, SIP revision because they are consistent with the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting.

DATES: *Effective Date:* This rule will be effective October 19, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0555. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Florida SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; email address: *bradley.twunjala@epa.gov.* For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone number is (404) 562–9214; email address: *adams.yolanda@epa.gov.* For information regarding the $PM_{2.5}$ NAAQS, contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Mr. Huey's telephone number is (404) 562–9104; email address: *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

EPA is taking final action to approve portions of Florida's March 15, 2012, SIP revision to adopt federal NSR permitting requirements. Florida's March 15, 2012, SIP revision includes changes to the Florida Administrative Code (F.A.C.) Chapter 62–210, *Stationary Sources—General Requirements, Section 200—Definitions (rule 62–210.200),* and Chapter 62–212, F.A.C., *Stationary Sources—Preconstruction Review, Section 300—General Preconstruction Review Requirements (rule 62–212.300)* and *Section 400—Prevention of Significant Deterioration (rule 62–212.400).* These changes adopt federal PSD permitting regulations promulgated in the final rulemakings entitled ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$),'' 73 FR 28321 (May 16, 2008), hereafter referred to as the ''NSR $PM_{2.5}$ Rule'' and ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC),'' 75 FR 64864 (October 20, 2010), hereafter referred to as the ''$PM_{2.5}$ PSD Increment-SILs-SMC Rule.'' EPA is not approving in this action Florida's incorporation into its SIP of the SIL thresholds and provisions promulgated in EPA's $PM_{2.5}$ PSD Increment-SILs-SMC Rule.

On July 27, 2012, EPA published a proposed rulemaking to approve the aforementioned changes to Florida's NSR PSD program. *See* 77 FR 44198. Comments on the proposed rulemaking were due on or before August 27, 2012. No comments, adverse or otherwise, were received on EPA's July 27, 2012 proposed rulemaking. Pursuant to section 110 of the CAA, EPA is now taking final action to approve the changes to Florida's NSR PSD program as provided in EPA's July 27, 2012, proposed rulemaking. A summary of the background for today's final action is provided below. EPA's July 27, 2012, proposed rulemaking contains more detailed information regarding the Florida SIP revision being approved today and the rationale for today's final action. Detailed information regarding the $PM_{2.5}$ NAAQS and NSR Program can also be found in EPA's July 27, 2012, proposed rulemaking as well as the abovementioned final rulemakings.

A. NSR $PM_{2.5}$ Rule

EPA finalized the NSR $PM_{2.5}$ Rule on May 16, 2008, which revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment areas and nonattainment areas (NAA) that: (1) Require NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) establish significant emission rates for direct $PM_{2.5}$ and precursor pollutants (including sulfur dioxide (SO_2) and nitrogen oxides (NO_X)); (3) establish $PM_{2.5}$ emission offsets; (4) provide exceptions to the grandfathering policy for permits being reviewed under the PM_{10} surrogate program; and (5) require states to account for gases that condense to form particles (condensables) in $PM_{2.5}$ and PM_{10} emission limits in PSD or nonattainment NSR (NNSR) permits. Additionally, the NSR $PM_{2.5}$ Rule authorized states to adopt provisions in their NNSR rules that would allow interpollutant offset trading. *See* 73 FR 28321. States were required to provide SIP submissions to address the requirements for the NSR $PM_{2.5}$ Rule by May 16, 2011. Florida's March 15, 2012, SIP revision addresses only the PSD requirements related to EPA's May 16, 2008, NSR $PM_{2.5}$ Rule.[1]

1. PM_{10} Surrogate and Grandfathering Policy

In the NSR $PM_{2.5}$ Rule, EPA required that major stationary sources seeking permits must begin directly satisfying the $PM_{2.5}$ requirements, as of the effective date of the rule, rather than relying on PM_{10} as a surrogate, with two exceptions.[2] The first exception is a ''grandfathering'' provision in the federal PSD program at 40 CFR

[1] Florida's March 15, 2012, SIP revision only addresses the State's PSD permitting program and does not adopt the NNSR permitting requirements for $PM_{2.5}$ emission offsets, condensable provision or the discretionary interpollutant trading policy and ratios promulgated in the 2008 NSR $PM_{2.5}$ Rule. Moreover Florida is in attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

[2] After EPA promulgated the NAAQS for $PM_{2.5}$ in 1997, the Agency issued guidance documents related to using PM_{10} as a surrogate for $PM_{2.5}$ entitled: ''Interim Implementation of New Source Review Requirements for $PM_{2.5}$.'' John S. Seitz, EPA, October 23, 1997 (the ''Seitz Memo'') and ''Implementation of New Source Review Requirements in PM–2.5 Nonattainment Areas'' (the ''2005 $PM_{2.5}$ NNSR Guidance''). The Seitz Memo was designed to help states implement NSR requirements pertaining to the new $PM_{2.5}$ NAAQS in light of technical difficulties posed by $PM_{2.5}$ at that time. The 2005 $PM_{2.5}$ NNSR Guidance provided direction regarding implementation of the NNSR provisions in $PM_{2.5}$ nonattainment areas in the interim period between the effective date of the $PM_{2.5}$ nonattainment designations (April 5, 2005) and EPA's promulgation of final $PM_{2.5}$ NNSR regulations (this included recommending that until EPA promulgated the $PM_{2.5}$ major NSR regulations, ''States should use a PM_{10} nonattainment major NSR program as a surrogate to address the requirements of nonattainment major NSR for the $PM_{2.5}$ NAAQS.'').

52.21(i)(1)(xi). This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008, effective date of the May 2008 final rule. The second exception was that states with SIP-approved PSD programs could continue to implement the Seitz Memo's PM_{10} Surrogate Policy for up to three years (until May 2011) or until the individual revised state PSD programs for $PM_{2.5}$ are approved by EPA, whichever comes first. On May 18, 2011 (76 FR 28646), EPA took final action to repeal the grandfathering provision at 40 CFR 52.21(i)(1)(xi). This final action ended the use of the 1997 PM_{10} Surrogate Policy for PSD permits under the federal PSD program at 40 CFR 52.21. In effect, any PSD permit applicant previously covered by the grandfathering provision (for sources that completed and submitted a permit application before July 15, 2008) [3] that did not have a final and effective PSD permit before the effective date of the repeal will not be able to rely on the 1997 PM_{10} Surrogate Policy to satisfy the PSD requirements for $PM_{2.5}$ unless the application includes a valid surrogacy demonstration.[4] *See* 76 FR 28646. In its March 15, 2012, SIP revision, Florida did not adopt the grandfathering provision at 40 CFR 52.21(i)(1)(xi) into its PSD regulations. Therefore, Florida's SIP is consistent with current federal regulations regarding the repeal of the grandfathering provision.

2. ''Condensable'' Provision

In the NSR $PM_{2.5}$ Rule, EPA revised the definition of ''*regulated NSR pollutant*'' for PSD to add a paragraph providing that ''particulate matter (PM) emissions, $PM_{2.5}$ emissions and PM_{10} emissions'' shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures and that on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, $PM_{2.5}$ and PM_{10} in permits issued. *See* 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(vi) and ''Emissions Offset Interpretative Ruling'' (40 CFR part 51, appendix S). On March 16, 2012, EPA proposed a rulemaking to amend the definition of ''*regulated NSR pollutant''* promulgated in the NSR $PM_{2.5}$ Rule regarding the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i) and EPA's Emissions Offset Interpretative Ruling. *See* 77 FR 15656. The rulemaking proposes to remove the inadvertent requirement in the NSR $PM_{2.5}$ Rule that the measurement of condensable ''particulate matter emissions'' be included as part of the measurement and regulation of ''particulate matter emissions.'' [5]

B. $PM_{2.5}$ PSD IncrementSILs-SMC Rule

The $PM_{2.5}$ PSD Increment-SILs-SMC Rule provided additional regulatory requirements under the PSD program regarding the implementation of the $PM_{2.5}$ NAAQS for NSR including: (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) SILs used as a screening tool (by a major source subject to PSD) to evaluate the impact a proposed major source or modification may have on the NAAQS or PSD increment; and (3) a SMC, (also a screening tool) used by a major source subject to PSD to determine the subsequent level of $PM_{2.5}$ data gathering required for a PSD permit application. The SILs and SMC are numerical values that represent thresholds of insignificant, i.e., *de minimis,*[6] modeled source impacts or monitored (ambient) concentrations, respectively. EPA established such values to be used as screening tools by a major source subject to PSD to determine the subsequent level of analysis and data gathering required for a PSD permit application for emissions of $PM_{2.5}$. EPA's authority to implement the SILs and SMC for PSD purposes has been challenged by the Sierra Club. *Sierra Club* v. *EPA,* Case No. 10–1413 (DC Circuit Court).[7]

1. PSD Increments

PSD increments prevent air quality in clean areas from deteriorating to the level set by the NAAQS. Therefore, an increment is the mechanism used to estimate ''significant deterioration'' [8] of air quality for a pollutant in an area. Under section 165(a)(3) of the CAA, a PSD permit applicant must demonstrate that emissions from the proposed construction and operation of a facility ''will not cause, or contribute to, air pollution in excess of any maximum allowable increase or allowable concentration for any pollutant.'' When a source applies for a permit to emit a regulated pollutant in an area that meets the NAAQS, the state and EPA must determine if emissions of the regulated pollutant from the source will cause significant deterioration in air quality. As described in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule, pursuant to the authority under section 166(a) of the CAA, EPA promulgated numerical PSD increments for $PM_{2.5}$ as a new pollutant [9] for which NAAQS were established after August 7, 1977,[10] and derived 24-hour and annual $PM_{2.5}$ increments for the three area classifications (Class I, II and III) using the ''contingent safe harbor'' approach. *See* 75 FR 64869 and the ambient air increment tables at 40 CFR 51.166(c)(1) and 52.21(c). In addition to PSD increments for the $PM_{2.5}$ NAAQS, the $PM_{2.5}$ PSD Increment-SILs-SMC Rule amended the definition at 40 CFR 51.166 and 52.21 for ''*major source baseline date*'' and ''*minor source baseline date*'' (including trigger date) to establish the $PM_{2.5}$ NAAQS specific dates associated with the

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

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

[5] The term ''particulate matter emissions'' includes particles that are larger than $PM_{2.5}$ and PM_{10} and is an indicator measured under various New Source Performance Standards (NSPS) at 40 CFR part 60. In addition to the NSPS for PM, it is noted that states have regulated ''particulate matter emissions'' for many years in their SIPs for PM, and the same indicator has been used as a surrogate for determining compliance with certain standards contained in 40 CFR part 63, regarding National Emission Standards for Hazardous Air Pollutants.

[6] The *de minimis* principle is grounded in a decision described by the court case *Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360 (D.C. Cir. 1980). In this case, reviewing EPA's 1978 PSD regulations, the court recognized that ''there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value.'' 636 F.2d at 360. *See* 75 FR 64864.

[7] On April 6, 2012, EPA filed a brief with the D.C. Circuit court defending the Agency's authority to implement SILs and SMC for PSD purposes.

[8] Significant deterioration occurs when the amount of the new pollution exceeds the applicable PSD increment, which is the ''maximum allowable increase'' of an air pollutant allowed to occur above the applicable baseline concentration1 for that pollutant. Section 169(4) of the CAA provides that the baseline concentration of a pollutant for a particular baseline area is generally the air quality at the time of the first application for a PSD permit in the area.

[9] EPA generally characterized the $PM_{2.5}$ NAAQS as a NAAQS for a new indicator of PM. EPA did not replace the PM_{10} NAAQS with the NAAQS for $PM_{2.5}$ when the $PM_{2.5}$ NAAQS were promulgated in 1997. EPA rather retained the annual and 24-hour NAAQS for $PM_{2.5}$ as if $PM_{2.5}$ was a new pollutant even though EPA had already developed air quality criteria for PM generally. *See* 75 FR 64864 (October 20, 2012).

[10] EPA interprets 166(a) to authorize EPA to promulgate pollutant-specific PSD regulations meeting the requirements of section 166(c) and 166(d) for any pollutant for which EPA promulgates a NAAQS after 1977.

implementation of $PM_{2.5}$ PSD increments. *See* 75 FR 64864.

2. Significant Monitoring Concentrations

As mentioned above, the SMC numerical value represents a threshold of insignificant (i.e., *de minimis*) monitored ambient impacts on pollutant concentrations. In the $PM_{2.5}$ PSD Increment-SILs-SMC Rule, EPA established a $PM_{2.5}$ SMC of 4 μg/m³ to be used as a screening tool by a major source subject to PSD to determine the subsequent level of $PM_{2.5}$ data gathering required for a PSD permit application. Using the SMC as a screening tool, sources may be able to demonstrate that the modeled air quality impact of emissions from the new source or modification, or the existing air quality level in the area where the source would construct, is less than the SMC (i.e., *de minimis*), and as such, may be allowed to forego the preconstruction monitoring requirement for a particular pollutant at the discretion of the reviewing authority.

Recently, the Sierra Club filed suit challenging EPA's authority to implement the $PM_{2.5}$ SILs [11] as well as the SMC for PSD purposes as promulgated in the October 20, 2012, rule. *Sierra Club* v. *EPA,* Case No 10–1413, DC Circuit Court. Specifically, regarding the SMC, Sierra Club claims that the use of SMCs to exempt a source from submitting a year's worth of monitoring data is inconsistent with the CAA. EPA responded to Sierra Club's claims in a Brief dated April 6, 2012, which describes the Agency's authority to develop and promulgate SMC.[12] A copy of EPA's April 6, 2010, Brief can be found in the docket for today's final rulemaking at *www.regulations.gov* using docket ID: EPA–R04–OAR–2012–0555.

II. This Action

EPA is taking final action to approve into the Florida SIP portions of the State's March 15, 2012, SIP revision to adopt the PSD permitting regulations to implement the $PM_{2.5}$ NAAQS including the NSR $PM_{2.5}$ and $PM_{2.5}$ Increment-SILs-SMC Rules. FDEP's PSD program definitions and preconstruction permitting rules are found at rule 62–210.200, F.A.C., and rules 62–212.300 through 62–212.400, F.A.C., respectively and apply to major stationary sources or modifications constructed in areas designated attainment or unclassifiable/attainment as required under part C of title I of the CAA with respect to the NAAQS. These changes to Florida's rules became state effective on March 28, 2012. FDEP's SIP revision adopts the NSR $PM_{2.5}$ Rule PSD provisions including: (1) The requirement for NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) the amendment establishing significant emission rates for direct $PM_{2.5}$ and precursor pollutants (SO_2 and NO_X) and recognizing $PM_{2.5}$ precursors for the definition of ''*significant emission rates*'' (at rule 62–21.200(282)) (as amended at 40 CFR 51.166(b)(23)(i)); and (3) the PSD requirement for states to address condensable PM in establishing enforceable emission limits for PM_{10} and $PM_{2.5}$ (at 62–212.300(1)(f)) as promulgated at 40 CFR 51.166(b)(49). Additionally, Florida's March 15, 2012, SIP revision did not adopt the grandfathering provision at 40 CFR 52.21(i)(1)(xi) in accordance with the repeal of the $PM_{2.5}$ grandfathering provision.

Regarding the condensable provision and EPA's intent to amend the definition of ''regulated NSR pollutant'' as discussed in the March 16, 2012, correction rulemaking, Florida's March 15, 2012, SIP revision did not adopt the term ''particulate matter emissions'' regarding the requirement to consider condensables as promulgated in the NSR $PM_{2.5}$ Rule. *See* 77 FR 15656. As mentioned above, EPA is taking final action to approve into the Florida SIP the remaining condensable requirement at 40 CFR 51.166(b)(49)(vi), which requires that condensable emissions be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10}. Florida's March 15, 2012, SIP revision added definitions for ''*condensable* PM_{10}'' at 62–210.200(94), ''*condensable* $PM_{2.5}$'' at 62–210–200(95) and ''*condensable PM''* at 62–210.200(93), for clarification purposes. EPA is taking final action to approve the aforementioned changes into the Florida SIP.

With respect to the $PM_{2.5}$ PSD Increment-SILs SMC Rule, EPA is taking final action to also approve into the Florida SIP the PSD increments for $PM_{2.5}$ annual and 24-hour NAAQS pursuant to section 166(a) of the CAA and SMC of 4 μg/m³ for $PM_{2.5}$ NAAQS. The March 15, 2012, SIP revision: (1) Revises the definition for ''*maximum allowable increase''* to incorporate by reference (IBR) the $PM_{2.5}$ PSD increments numerical values (established in the ambient air increment tables at 40 CFR 51.166(c)(1) and 52.21(c) at 62–204.800, F.A.C.[13]); (2) amends the definitions for ''*major source baseline date''* and ''*minor source baseline date''* to establish relevant dates for $PM_{2.5}$ increment consumption and establish trigger dates (as established at 40 CFR 51.166(b)(14)(i)(c) and 51.166(b)(14)(ii)(c) respectively) and; (3) revises the definition for ''*baseline area''* as promulgated at 40 CFR 51.166(b)(15)(i) and (ii) and adds definitions for *''baseline concentration.''* The March 15, 2012, SIP submission also adds definitions for ''*Class I Area''* and ''*Class II Area''* at Chapter 62–210.200(77) and (78), F.A.C., respectively. The definition for Class I Area IBR 40 CFR part 81, Subpart D (the federal Class I Area list) at rule 62–204.800, F.A.C.

Regarding the SILs and SMC, EPA's authority to implement the $PM_{2.5}$ SILs and SMC is currently the subject of litigation by the Sierra Club. In a brief filed in the DC Circuit on April 6, 2012, EPA described the Agency's authority under the CAA to promulgate and implement the SMCs and SILs *de minimis* thresholds. *Sierra Club* v. *EPA,* Case No 10–1413 DC Circuit. However, EPA is finalizing approval of the promulgated SMC thresholds into the Florida SIP (at rule 62–212.400(3)(e)1, F.A.C.) because the Agency believes the SMC is a valid exercise of the Agency's *de minimis* authority as well as the fact they are consistent with EPA's promulgated levels in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule. The ongoing litigation may result in the court decision that may require subsequent rule revisions and SIP revisions from Florida.

In response to the litigation, EPA requested that the court remand and vacate the new regulatory text at 40 CFR 51.166(k)(2) and 52.21(k)(2) concerning the implementation of SILs for $PM_{2.5}$ so that EPA can make necessary rulemaking revisions to that text.[14] In light of EPA's request for remand and vacatur and our acknowledgement of

[11] As mentioned earlier, due to litigation by the Sierra Club, EPA is not taking final action on the SILs portion of the Florida March 15, 2012, SIP revision at this time but will take action once the court case regarding SILs implementation is resolved.

[12] Additional information on this issue can also be found in an April 25, 2010, comment letter from EPA Region 6 to the Louisiana Department of Environmental Quality regarding the SILs-SMC litigation. A copy of this letter can be found in the docket for today's rulemaking at *www.regulations.gov* using docket ID: EPA–R04–OAR–2012–0555.

[13] Florida IBR federal rules at rule 62–204.800 F.A.C.

[14] In the preamble to the October 20, 2010, final rule EPA indicates that the Agency does not consider the SILs to be a mandatory SIP element, but regard them as discretionary on the part of regulating authority for use in the PSD permitting process. *See* 75 FR 64864 at 64899.

the need to revise the regulatory text presently contained at paragraph (k)(2) of sections 51.166 and 52.21, the Agency has determined at this time not to approve the SILs portion of FDEP's March 15, 2012, SIP revision that contains the affected regulatory text in Florida's PSD regulations at rule, 62–212.400(5), F.A.C., and 62–210.200(283)(c), F.A.C. EPA will take action on the SILs portion of Florida's March 15, 2012, SIP revision in a separate rulemaking once the issue regarding the court case has been resolved.[15]

III. Final Action

EPA is taking final action to approve portions of Florida's March 15, 2012, SIP revision (with the exception of the SILs threshold and provisions), that adopt federal permitting regulations amended in the NSR $PM_{2.5}$ and the $PM_{2.5}$ PSD Increment-SILs-SMC Rules to implement the $PM_{2.5}$ NAAQS for the NSR program because they are consistent with section 110 of the CAA and its regulations regarding NSR permitting.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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 Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 19, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: September 6, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart K—Florida

■ 2. Section 52.520(c) is amended under Chapters 62–210 and 62–212 by revising the entries for ''Section 62–210.200'' and ''Section 62–212.400'' to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED FLORIDA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation

[15] EPA is currently developing guidance to provide a provisional course of action to implement the $PM_{2.5}$ SILs pending revision to implementing (k)(2) provisions and the litigation. The guidance will ensure that the $PM_{2.5}$ SILs are properly applied as part of a PSD compliance demonstration to show that a source's impact will not cause or contribute to a violation of the $PM_{2.5}$ NAAQS or increment.

EPA-APPROVED FLORIDA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 62–210 Stationary Sources—General Requirements				
62–210.200 ...	Definitions	March 28, 2012	September 19, 2012 [Insert citation of publication].	As of September 19, 2012, 61–210.200 does not include Florida's revision to adopt the $PM_{2.5}$ SILs threshold and provisions (as promulgated in the October 20, 2010, $PM_{2.5}$ PSD Increment-SILs-SMC Rule at 40 CFR 52.21(k)(2)).
*	*	*	*	*
Chapter 62–212 Stationary Sources—Preconstruction Review				
62–212.400 ...	Prevention of Significant Deterioration.	March 28, 2012	September 19, 2012 [Insert citation of publication].	As of September 19, 2012, 61–212.400 does not include Florida's revision to adopt the $PM_{2.5}$ SILs threshold and provisions (as promulgated in the October 20, 2010, $PM_{2.5}$ PSD Increment-SILs-SMC Rule at 40 CFR 52.21(k)(2)).
*	*	*	*	*

* * * * *

[FR Doc. 2012–22976 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2009–0648; FRL–9728–7]

Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County: Infrastructure and Interstate Transport Requirements for the 1997 and 2008 Ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving submittals from the Governor of New Mexico for the City of Albuquerque/Bernalillo County area, pursuant to the Clean Air Act (CAA or the Act). These submittals address the infrastructure elements specified in the CAA necessary to implement, maintain, and enforce the 1997 and 2008 8-hour ozone and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or standards). We find that the current Albuquerque/Bernalillo County State Implementation Plan (SIP) meets the infrastructure elements for the 1997 and 2008 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. We also find that the current Albuquerque/Bernalillo County SIP meets the CAA requirement that emissions from sources in the area do not interfere with prevention of significant deterioration (PSD) measures required in the SIP of any other state, with regard to the 1997 and 2008 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. EPA is also approving SIP revisions that modify the PSD SIP to include nitrogen oxides (NO_X) as an ozone precursor. EPA is approving revisions to the Albuquerque/Bernalillo County PSD SIP that identify the $PM_{2.5}$ precursors and establish significant emission rates for said precursors, consistent with the federal requirements. We are also approving other revisions to the Albuquerque/Bernalillo County PSD SIP to maintain consistency with the federal PSD permitting requirements. In addition to these revisions, EPA is approving other revisions to the Albuquerque/Bernalillo County SIP necessary to implement the NAAQS.

DATES: This final rule is effective on October 19, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2009–0648. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the City of Albuquerque, Environmental Health Department—Air Quality Division, One Civic Plaza, Room 3047, Albuquerque, New Mexico 87103, telephone 505–768–1972, email address *aqd@cabq.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. John Walser, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7128; fax number 214–665–6762; email address *walser.john@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' means EPA.

Table of Contents

I. Background
a. Section 110(a)(1) and (2)