the transaction has been reported, paragraph (d)(1) shall not be construed as prohibiting:

(A) The disclosure by an investment adviser, or any director, officer, employee, or agent of an investment adviser of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the investment adviser for compliance with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(B) The sharing by an investment adviser, or any director, officer, employee, or agent of the investment adviser, of a SAR, or any information that would reveal the existence of a SAR, within the investment adviser's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, official duties shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, to a non-governmental entity in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(e) *Limitation on liability.* An investment adviser, and any director, officer, employee, or agent of any investment adviser, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Investment advisers shall be examined by FinCEN or its delegates under the terms of the Bank Secrecy Act, for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this part.

(g) *Applicability date.* This section applies to transactions occurring after full implementation of an anti-money laundering program required by § 1031.210.

Subpart D—Records Required To Be Maintained by Investment Advisers

§ 1031.400 General.

Investment advisers are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Investment advisers should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to investment advisers.

§ 1031.410 Recordkeeping.

Refer to § 1010.410 of this chapter.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1031.500 General.

Investment advisers are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Investment advisers should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to investment advisers.

§ 1031.520 Special information sharing procedures to deter money laundering and terrorist activity for investment advisers.

(a) Refer to § 1010.520 of this chapter.

(b) [Reserved]

§ 1031.530 [Reserved]

§ 1031.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this chapter.

(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Investment Advisers

§ 1031.600 [Reserved]

§ 1031.610 [Reserved]

§ 1031.620 [Reserved]

§ 1031.630 [Reserved]

§ 1031.640 [Reserved]

§ 1031.670 [Reserved]

Dated: August 24, 2015.

Jennifer Shasky Calvery

Director, Financial Crimes Enforcement Network.

[FR Doc. 2015–21318 Filed 8–31–15; 8:45 am]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0079; FRL–9933–31–Region 4]

Approval and Promulgation of Implementation Plans; Alabama: Nonattainment New Source Review

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of a revision to the Alabama State Implementation Plan (SIP) submitted by the Alabama Department of Environmental Management (ADEM) to EPA on May 2, 2011. The proposed SIP revision modifies Alabama's nonattainment new source review (NNSR) regulations in their entirety to be consistent with the federal new source review (NSR) regulations for the implementation of the criteria pollutant national ambient air quality standards (NAAQS). EPA is proposing approval of portions of the NNSR rule changes in Alabama's May 2, 2011, SIP revision because the Agency has preliminarily determined that the changes are consistent with the Clean Air Act (CAA or Act) and federal regulations regarding NNSR permitting.

DATES: Comments must be received on or before October 1, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0079, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: R4-ARMS@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* ''EPA–R04–OAR–2012–0079,'' Air Regulatory Management Section (formerly Regulatory Development Section), Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0079. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. 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 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For further information regarding the Alabama SIP, contact Mr. D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Akers can be reached by phone at (404) 562–9089 or via electronic mail at *akers.brad@epa.gov.* For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Telephone number: (404) 562–9214; email address: *adams.yolanda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What is EPA's proposed action for changes to Alabama's NNSR rules?

On May 2, 2011, ADEM submitted a SIP revision to EPA for approval that involves changes to Alabama's regulations needed to make them consistent with federal requirements for general and transportation conformity and NSR permitting.[1] In this action, EPA is proposing to approve the portion of Alabama's May 2, 2011 submission that makes changes to Alabama's NNSR program, set forth at ADEM Administrative Code, Division 3, Chapter 14, Subchapter .05 (ADEM Rule 335–3–14-.05), which applies to the construction and modification of any major stationary source in or near a nonattainment area (NAA) as required by part D of title I of the CAA. Alabama's NNSR regulations at ADEM Rule 335–3–14-.05 were originally approved into the SIP on November 26, 1979 (*See* 44 FR 67375), with periodic revisions approved through December 8, 2000 (*See* 65 FR 76938). Subsequent revisions to Alabama's NNSR regulations have not yet been incorporated into Alabama's SIP. Alabama's May 2, 2011, SIP revision replaces the State's NNSR regulations in their entirety with a new version that reflects changes to the federal NNSR regulations at 40 Code of Federal Regulations (CFR) 51.165,[2] including provisions promulgated in the following federal rules: (1) ''Requirements for Preparation, Adoption and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; Standards of Performance for New Stationary Sources,'' Final Rule, 57 FR 32314 (July 21, 1992) (hereafter referred to as the Wisconsin Electric Power Company (WEPCO) Rule); (2) ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects,'' Final Rule, 67 FR 80186 (December 31, 2002) (hereafter referred to as the NSR Reform Rule); (3) ''Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Reconsideration,'' Final Rule, 68 FR 63021 (November 7, 2003) (hereafter referred to as the Reconsideration Rule); (4) ''Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Removal of Vacated Elements,'' Final Rule, 72 FR 32526 (June 13, 2007) (hereafter referred to as the Vacated

[1] The original submittal, found at Docket ID No. EPA–R04–OAR–2012–0079, proposed changes to Alabama regulations pertaining to NSR and general and transportation conformity found at ADEM Administrative Code Chapter 335–3–14—*Permits* (including general permits, prevention of significant deterioration (PSD) and NNSR) and Chapter 335–3–17 *Conformity of Federal Actions to State Implementation Plans,* respectively. The first two portions of the submittal regarding conformity and PSD were acted on by EPA on September 26, 2012 (*See* 77 FR 59100).

[2] EPA's regulations governing the implementation of NSR permitting programs are contained in 40 CFR 51.160–.166; 52.21, .24; and part 51, appendix S. The CAA NSR program is composed of three separate programs: PSD, NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS—''attainment areas''—as well as areas where there is insufficient information to determine if the area meets the NAAQS—''unclassifiable areas.'' The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—''nonattainment areas.'' The Minor NSR program addresses construction or modification activities that do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as the NSR programs.

Elements Rule); (4) ''Prevention of Significant Deterioration and Nonattainment New Source Review: Reasonable Possibility in Recordkeeping,'' Final Rule, 72 FR 72607 (December 21, 2007), (hereafter referred to as the Reasonable Possibility Rule); (5) ''Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline,'' Final Rule, 70 FR 71612 (November 29, 2005) (hereafter referred to as the Phase 2 Rule); (6) ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),[3]'' Final Rule, 73 FR 28321 (May 16, 2008) (hereafter referred to as the NSR $PM_{2.5}$ Rule); (7) ''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),'' Final Rule, 75 FR 64864 (October 20, 2010) (hereafter referred to as the $PM_{2.5}$ PSD Increments-SILs-SMC Rule [4]); and (8) ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions; Interim Rule; Stay and Revisions'', Interim Rule, 76 FR 17548 (March 30, 2011) (hereafter referred to as the Fugitive Emissions Interim Rule).

EPA is not, however, proposing to approve into the Alabama SIP ADEM Rule 335–3–14–.05(1)(k), which Alabama promulgated pursuant to the federal rule entitled ''Prevention of Significant Deterioration, Nonattainment New Source Review, and Title V: Treatment of Certain Ethanol Production Facilities Under the 'Major Emitting Facility' Definition'', Final Rule, 72 FR 24060 (May 1, 2007) (or the Ethanol Rule).[5] EPA is also not acting on the provision at Rule 335–3–14–.05(2)(c)3 that excludes fugitive emissions from the determinion of creditable emission increases and decreases. (See Sections II.F. and III.F. of this notice for details). Finally, EPA is not proposing to approve ADEM's rules regarding the $PM_{2.5}$ significant impact levels (SILs) for PSD at Rule 335–3–14–.04(8)(h)1., the NNSR interpollutant offset ratios at ADEM Rule 335–3–14-.05(3)(g), or the ''actual-to-potential'' NNSR applicability test at ADEM Rule 335–3–14–.05(1)(h), all of which ADEM withdrew from EPA's consideration subsequent to the May 2, 2011 submittal.

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

This proposed action to revise the NNSR regulations in Alabama's SIP relates to EPA's WEPCO Rule, 2002 NSR Reform Rule (and associated Reconsideration Rule and Vacated Elements Rule), Reasonable Possibility Rule, Phase 2 Rule, NSR $PM_{2.5}$ Rule, $PM_{2.5}$ PSD Increments-SILs-SMC Rule, and Fugitive Emissions Interim Rule. Together these rules address the NSR permitting requirements needed to implement the NAAQS in NAAs. The State's May 2, 2011, revision adopts into the Alabama SIP the NNSR requirements promulgated in these rules to be consistent with federal regulations. A brief summary of the abovementioned rules as well as details of Alabama's May 2, 2011, SIP submission is discussed below.

Originally, Alabama included $PM_{2.5}$ SILs and NNSR interpollutant offset ratios in the May 2, 2011, SIP submission, consistent with the $PM_{2.5}$ PSD Increments-SILs-SMC Rule. However, EPA cannot act on SIL provisions for PSD due to the January 22, 2013, decision by the D.C. Circuit vacating and remanding to EPA the SILs portion of the $PM_{2.5}$ PSD Increments-SILs-SMC Rule for further consideration.[6] *See Sierra Club* v. *EPA,* 705 F.3d 458 (D.C. Cir. 2013). Nor can EPA approve the interpollutant offset ratios for $PM_{2.5}$ and selected precursors included in the May 2, 2011 submission, which adopted the EPA presumptive ratios from the May 16, 2008, preamble to the NSR $PM_{2.5}$ Implementation Rule. After publication, these ratios were the subject of a petition for reconsideration, which the Administrator granted, and are no longer presumptively approvable. Accordingly, ADEM has since submitted a letter to EPA dated October 9, 2014, requesting that the $PM_{2.5}$ SILs provisions for PSD and the interpollutant trading ratios for NNSR be withdrawn from the May 2, 2011, submission; therefore these provisions are no longer before EPA for consideration. ADEM still intends to adopt the NNSR interpollutant trading policy itself, however, and therefore the letter only requested the withdrawal of the presumptive ratios. The letter can be found in Docket ID: EPA–R04–OAR–2012–0079.

The May 2, 2011, submittal also included an ''actual-to-potential'' NNSR applicability test for projects involving only existing emissions units at ADEM Rule 335–3–14–.05(1)(h). This test, which is not contained in the federal regulations, utilizes the definition of ''actual emissions'' at ADEM Rule 335–

[3] Airborne particulate matter (PM) with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) are considered to be ''fine particles'' and are also known as $PM_{2.5}$. Fine particles in the atmosphere are made up of a complex mixture of components including sulfate; nitrate; ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as ''crustal'' material, although it may contain material from other sources. The health effects associated with exposure to $PM_{2.5}$ include potential aggravation of respiratory and cardiovascular disease (*i.e.,* lung disease, decreased lung function, asthma attacks and certain cardiovascular issues). On July 18, 1997, EPA revised the NAAQS for PM to add new standards for fine particles, using $PM_{2.5}$ as the indicator. Previously, EPA used PM_{10} (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the PM NAAQS. EPA established health-based (primary) annual and 24-hour standards for $PM_{2.5}$, setting an annual standard at a level of 15.0 micrograms per cubic meter ($\mu g/m^3$) and a 24-hour standard at a level of 65 $\mu g/m^3$. *See* 62 FR 38652. At the time the 1997 primary standards were established, EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of $PM_{2.5,}$ such as visibility impairment, soiling, and materials damage. On October 17, 2006, EPA revised the primary and secondary 24-hour NAAQS for $PM_{2.5}$ to 35 $\mu g/m^3$ and retained the existing annual $PM_{2.5}$ NAAQS of 15.0 $\mu g/m^3$. *See* 71 FR 61236. On January 15, 2013, EPA published a final rule revising the annual $PM_{2.5}$ NAAQS to 12 $\mu g/m^3$. *See* 78 FR 3086.

[4] The D.C. Circuit vacated the portions of the $PM_{2.5}$ PSD Increment-SILs-SMC Rule addressing the SMC and SILs (and remanded the SILs portion to EPA for further consideration) for PSD, but left the $PM_{2.5}$ SILs in place for the NNSR program in the table in section 51.165(b)(2). *See Sierra Club* v. *EPA,* 705 F.3d 458 (D.C. Cir. 2013).

[5] Alabama's changes to its NNSR regulations (at 335–3–14–.05(1)(k)) exclude ''chemical process plants'' that produce ethanol through a natural fermentation process from the NSR major source permitting requirement as promulgated in the Ethanol Rule (as amended at 40 CFR 51.165). *See* 72 FR 24060 (May 1, 2007). However, due to a petition by Natural Resources Defense Council to reconsider the rule, EPA is not proposing to take action to approve this provision into the Alabama SIP at this time. Pending final resolution, EPA will make a final determination on action regarding this portion of Alabama's SIP revision.

[6] On January 22, 2013, D.C. Circuit granted a request from EPA to vacate and remand to the Agency the portions of the October 20, 2010 rule addressing the SILs for $PM_{2.5}$, except for the parts codifying the $PM_{2.5}$ SILs in the NNSR rule at 40 CFR 51.165(b)(2), so that the EPA could voluntarily correct an error in the provisions. *See Sierra Club* v. *EPA,* 705 F.3d 458 at 463–66 (D.C. Cir. 2013). The Court also vacated parts of the $PM_{2.5}$ PSD Increment-SILs-SMC Rule establishing the $PM_{2.5}$ SMC, finding that the Agency had exceeded its statutory authority with respect to these provisions. *Id* at 469. On December 9, 2013, EPA issued a final rulemaking to remove the vacated and remanded $PM_{2.5}$ SILs and the vacated $PM_{2.5}$ SMC provisions from the Federal regulations at 40 CFR 51.166 and 52.21. *See* 78 FR 73698.

3–14-.05(2)(u) for determining whether a change to an existing emissions unit would result in a significant emissions increase that triggers NNSR applicability.[7] To be consistent with the NNSR provisions at 40 CFR 51.165, ADEM submitted a letter to EPA on June 5, 2015, withdrawing the ''actual-to-potential'' applicability test at ADEM Rule 335–3–14–.05(1)(h) from the May 2, 2011, SIP revision. This letter is included in the docket for this proposed action (Docket ID: EPA–R04–OAR–2012–0079).

A. WEPCO Rule

On July 21, 1992, EPA finalized the WEPCO Rule, which put forward regulations arising out of the decision in the WEPCO case. *See Wisconsin Electric Power Co.* v. *Reilly,* 893 F.2d 901 (7th Cir. 1990). The WEPCO Rule made changes to the NNSR and PSD regulations found at 40 CFR 51.165, 51.166 and 52.21. Relevant to this proposed rulemaking, EPA established definitions in the WEPCO Rule for electric utility steam generating unit (EGU), clean coal technology (CCT), CCT demonstration project, temporary CCT demonstration project, and repowering. In addition, the rule exempted CCT demonstration projects (that constitute repowering) from PSD or NNSR requirements (major modification), providing the projects do not cause an increase in potential to emit of a regulated NSR pollutant emitted by the unit.

B. NSR Reform and Reasonable Possibility

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 CFR parts 51 and 52 regarding the CAA's PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the ''2002 NSR Reform Rules.'' The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, the 2002 NSR Reform Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plant-wide applicability limits (PALs) to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs) from the definition of ''physical change or change in the method of operation.'' On November 7, 2003 (68 FR 63021), EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules, which added a definition for ''replacement unit'' and clarified an issue regarding PALs. For additional information on the 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002) and *http://www.epa.gov/nsr/actions.html#2002.*

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules. *See* 45 FR 52676 (August 7, 1980). On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued a decision on the challenges to the 2002 NSR Reform Rules: *New York* v. *U.S. EPA,* 413 F.3d 3 (D.C. Cir. 2005). In summary, the D.C. Circuit vacated portions of the rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping and the term ''reasonable possibility'' found in 40 CFR 52.21(r)(6) and 40 CFR 51.165(a)(6) and 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to remove from federal law all provisions pertaining to clean units and the PCP exemption that were vacated by the D.C. Circuit.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping, the D.C. Circuit remanded these provisions to EPA either to provide an acceptable explanation for its ''reasonable possibility'' standard, or to devise an appropriate alternative. To satisfy the court, the EPA published the Reasonable Possibility Rule, thereby taking action to clarify that a ''reasonable possibility'' applies where source emissions equal or exceed 50 percent of the CAA NSR significance levels for any pollutant. *See* 72 FR 72607 (December 21, 2007). The Reasonable Possibility Rule identified, for sources and reviewing authorities, the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records. EPA's December 21, 2007, final rule on the recordkeeping and reporting provisions also explained state obligations with regard to the reasonable possibility-related rule changes.

C. Phase 2 Rule

Part of Alabama's May 2, 2011, SIP submittal to revise its NNSR rules relates to EPA's 1997 8-Hour Ozone NAAQS Implementation Rule NSR Update or Phase 2 Rule. On November 29, 2005, EPA published the Phase 2 Rule, which addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS[8] such as reasonably available control technology, reasonably available control measures, reasonable further progress, modeling and attainment demonstrations, NSR, and the impact to reformulated gas for the 1997 8-hour ozone NAAQS transition. *See* 70 FR 71612. The NSR permitting requirements established in the rule included the following provisions: (1) Recognized NO_X as an ozone precursor for PSD purposes; (2) changes to the NNSR rules establishing major stationary thresholds (marginal, moderate, serious, severe, and extreme NAA classifications); and significant emission rates for the 8-hour ozone, PM_{10} and carbon monoxide NAAQS; and (3) revised the criteria for crediting emission reductions credits from operation shutdowns and curtailments as offsets, and changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone NAA. For additional information on provisions in the Phase 2 Rule see the November 29, 2005, final rule (70 FR 71612).

D. NSR $PM_{2.5}$ Rule

On May 16, 2008, EPA finalized the NSR $PM_{2.5}$ Rule to implement the $PM_{2.5}$ NAAQS for the NSR permitting program. *See* 73 FR 28321. The NSR $PM_{2.5}$ Rule revised the federal NSR program requirements to establish the framework for implementing

[7] The definition of ''actual emissions'' at ADEM Rule 335–3–14–.05(2)(u) is based on the definition of ''actual emissions'' in the federal NNSR regulations at 40 CFR 51.165(a)(1)(xii). However, the federal regulations expressly state that ''this definition shall not apply for calculating whether a significant emissions increase has occurred.'' 40 CFR 51.165(a)(1)(xii)(A).

[8] On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million—also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as unclassifiable/attainment, nonattainment and unclassifiable for the 1997 8-hour ozone NAAQS. In addition, on April 30, 2004, as part of the framework to implement the 1997 8-hour ozone NAAQS, EPA promulgated an implementation rule in two phases (Phase I and II). The Phase I Rule (effective on June 15, 2004), provided the implementation requirements for designating areas under subpart 1 and subpart 2 of the CAA. *See* 69 FR 23951.

preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and NAA. Specifically, the NSR $PM_{2.5}$ Rule established the following NSR provisions to implement the $PM_{2.5}$ NAAQS: (1) Required NSR permits to address directly-emitted $PM_{2.5}$ and certain precursor pollutants; (2) established significant emission rates for direct $PM_{2.5}$ and precursor pollutants (including sulfur dioxide (SO_2) and nitrogen oxides (NO_X)); (3) established NNSR $PM_{2.5}$ emission offsets; (4) required states to account for gases that condense to form particles (condensables) in $PM_{2.5}$ and PM_{10} applicability determinations and emission limits in PSD and NNSR permits; and (5) provided a grandfathering provision in the federal program for certain pending $PM_{2.5}$ permit applications. Additionally, the NSR $PM_{2.5}$ Rule authorized states to adopt provisions in their NNSR rules that would allow interpollutant offset trading. Alabama's May 2, 2011 SIP revision addresses the effective portions of the NNSR provisions established in EPA's May 16, 2008 NSR $PM_{2.5}$ Rule. Two key issues described in greater detail below include the NSR $PM_{2.5}$ litigation and interpollutant trading ratios for the NNSR program.

1. $PM_{2.5}$ Implementation Rule(s) Litigation

On January 4, 2013, the D.C. Circuit issued a judgment [9] that remanded EPA's April 25, 2007 [10] and May 16, 2008 $PM_{2.5}$ implementation rules implementing the 1997 $PM_{2.5}$ NAAQS. *See Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013). The Court found that because the statutory definition of PM_{10} (see section 302(t) of the CAA) included particulate matter with an aerodynamic diameter less than or equal to 10 micrometers, it necessarily includes $PM_{2.5.}$ EPA had developed the 2007 and 2008 (or NSR $PM_{2.5}$ Rule) Rules consistent with the general NAA requirements of subpart 1 of Part D, title I, of the CAA. Relative to subpart 1, subpart 4 of Part D, title I includes additional provisions that apply to PM_{10} NAA and is more specific about what states must do to bring areas into attainment. In particular, subpart 4 includes section 189(e) of the CAA, which requires the control of major stationary sources of PM_{10} precursors (and hence under the court decision, $PM_{2.5}$ precursors) ''except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the standard in the area.'' The court ordered EPA to repromulgate the implementation rules pursuant to subpart 4.

On June 2, 2014, EPA published a final rule [11] which, in part, set a December 31, 2014 deadline for states to make any remaining required attainment-related and NNSR SIP submissions, pursuant to and considering the application of subpart 4. *See* 79 FR 31566. Requirements under subpart 4 for a moderate NAA are generally comparable to subpart 1, including: (1) CAA section 189(a)(1)(A) (NNSR permit program); (2) section 189(a)(1)(B) (attainment demonstration or demonstration that attainment by the applicable attainment date is impracticable); (3) section 189(a)(1)(C) (reasonably available control measures and reasonably available control technology (RACT); and (4) section 189(c) (reasonable further progress and quantitative milestones). The additional requirements pursuant to subpart 4 as opposed to subpart 1 correspond to section 189(e) (precursor requirements for major stationary sources). Further additional SIP planning requirements are introduced by subpart 4 in the case that a moderate NAA is reclassified to a serious NAA, or in the event that the moderate NAA needs additional time to attain the NAAQS. The additional requirements under subpart 4 are not applicable for the purposes of CAA section 107(d)(3)(E) in any area that has submitted a complete redesignation request prior to the due date for those requirements; therefore, EPA is not required to consider subpart 4 requirements for moderate NAA that have submitted a redesignation request prior to December 31, 2014. *See* 79 FR at 31570.

Two areas were initially designated moderate nonattainment for the 1997 annual $PM_{2.5}$ NAAQS in Alabama: The Birmingham area and the Chattanooga multi-state area.[12] On May 2, 2011, ADEM submitted a redesignation request for the Birmingham NAA for the 1997 annual $PM_{2.5}$ NAAQS. This request was granted, and the area was redesignated on January 22, 2013. *See* 78 FR 4341. On December 22, 2014, the Jackson County, Alabama portion of the Chattanooga NAA was successfully redesignated to attainment for the 1997 $PM_{2.5}$ annual NAAQS based on an April 23, 2013 request for redesignation by ADEM.[13] *See* 79 FR 76235. Because these counties in Alabama have been redesignated, Alabama has no other $PM_{2.5}$ NAA for the annual 1997 NAAQS, the 24-hour 1997 NAAQS, nor the 24-hour 2006 $PM_{2.5}$ NAAQS. Therefore, the additional NNSR SIP requirements pursuant to subpart 4 do not apply to the State.

2. Interpollutant Trading Ratios

The NSR $PM_{2.5}$ Rule authorized states to adopt provisions in their NNSR rules that would allow major stationary sources and major modifications locating in areas designated nonattainment for $PM_{2.5}$ to offset emissions increases of direct $PM_{2.5}$ emissions or $PM_{2.5}$ precursors with reductions of either direct $PM_{2.5}$ emissions or $PM_{2.5}$ precursors in accordance with offset ratios contained in the approved SIP for the applicable NAA. The inclusion, in whole or in part, of the interpollutant trading offset provisions for $PM_{2.5}$ is discretionary on the part of the states. In the preamble to the NSR $PM_{2.5}$ Rule, EPA included preferred offset ratios applicable to specific $PM_{2.5}$ precursors that states may adopt in conjunction with the new interpollutant trading offset provisions for $PM_{2.5}$, and for which the state could rely on the EPA's technical work to demonstrate the adequacy of the ratios for use in any $PM_{2.5}$ NAA. Alternatively, the preamble indicated that states may adopt their own ratios, subject to the EPA's approval, that would have to be

[9] The Natural Resources Defense Council, Sierra Club, American Lung Association, and Medical Advocates for Healthy Air challenged before the D.C. Circuit EPA's April 25, 2007 Rule entitled ''Clean Air Fine Particle Implementation Rule'' (72 FR 20586), which established detailed implementation regulations to assist states with the development of SIPs to demonstrate attainment for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS and the separate May 16, 2008 NSR $PM_{2.5}$ Rule (which is considered in this proposed rulemaking). This proposed rulemaking only pertains to the impacts of the Court's decision on the May 16, 2008 NSR $PM_{2.5}$ Rule and not the April 25, 2007 implementation rule as the State's May 2, 2011 SIP revision adopts the NSR permitting provisions established in the NSR $PM_{2.5}$ Rule.

[10] This rule is entitled ''Clean Air Fine Particle Implementation Rule,'' Final Rule, 72 FR 20586 (hereafter referred to as the 2007 Rule).

[11] The rule is entitled ''Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) and 2006 $PM_{2.5}$ NAAQS'', Final Rule, 79 FR 31566 (June 2, 2014). This final rule also identifies the initial classification of current 1997 and 2006 $PM_{2.5}$ nonattainment areas as moderate and the EPA guidance and relevant rulemakings that are currently available regarding implementation of subpart 4 requirements.

[12] EPA designated the Birmingham multi-county area and Chattanooga TN–GA–AL area as nonattainment for the 1997 Annual $PM_{2.5}$ NAAQS on January 5, 2005 (70 FR 944) as supplemented on April 14, 2005 (70 FR 19844).

[13] The Georgia portion of the Chattanooga TN–GA–AL nonattainment area for 1997 Annual $PM_{2.5}$ NAAQS has been redesignated in the December 19, 2014 final rule (79 FR 75748). Tennessee submitted a redesignation request for the Tennessee portion of the Chattanooga TN–GA–AL NAA on November 11, 2014, but the redesignation has not yet been proposed.

substantiated by modeling or other technical demonstrations of the net air quality benefit for ambient $PM_{2.5}$ concentrations.

The preferred ratios were subsequently the subject of a petition for reconsideration which the EPA Administrator granted in 2009. As a result of the reconsideration, on July 21, 2011, EPA issued a memorandum entitled ''Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles ($PM_{2.5}$)'' (hereafter referred to as the ''Interpollutant Trading Memorandum''). The Interpollutant Trading Memorandum indicated that the existing preferred offset ratios are no longer considered presumptively approvable and that any precursor offset ratio submitted as part of the NSR SIP for a $PM_{2.5}$ NAA must be accompanied by a technical demonstration showing the net air quality benefits of such ratio for the $PM_{2.5}$ NAA in which it will be applied. Alabama's May 2, 2011, SIP revision adopts the interpollutant trading offset provisions, and originally adopted the preferred ratios included in the May 16, 2008, preamble. However, ADEM has since withdrawn these ratios in a letter dated October 9, 2014 (*See* Docket ID: EPA–R04–OAR–2012–0079). EPA's analysis of Alabama's May 2, 2011, SIP revision regarding interpollutant trading is provided below in Section III.

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

The October 20, 2010, final rulemaking established the following: (1) $PM_{2.5}$ increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS; (2) $PM_{2.5}$ SILs for PSD and NNSR; and (3) SMC for PSD purposes. *See* 75 FR 64864. EPA approved the provisions for $PM_{2.5}$ PSD increments and SMC into the Alabama SIP on September 26, 2012 (77 FR 59100).[14] Though ADEM had submitted $PM_{2.5}$ SILs for PSD purposes, EPA did not take action on them in the September 26, 2012 rulemaking. Subsequently, in response to a challenge to the $PM_{2.5}$ SILs and SMC provisions of the $PM_{2.5}$ PSD-Increment-SILs-SMC Rule filed by the Sierra Club, the D.C. Circuit vacated and remanded to EPA for further consideration the portions of the rule addressing $PM_{2.5}$ SILs, except for the $PM_{2.5}$ SILs promulgated in EPA's NNSR rules at 40 CFR 51.165(b)(2). *See Sierra Club* v. *EPA,* 705 F.3d 458, 469 (D.C. Cir. 2013). The D.C. Circuit also vacated the parts of the rule establishing a $PM_{2.5}$ SMC for PSD purposes. *Id.* EPA removed these vacated provisions in a December 9, 2013 final rule (78 FR 73693). In a letter dated October 9, 2014, ADEM withdrew the $PM_{2.5}$ SILs set forth in Alabama's PSD regulations from EPA's consideration for incorporation into Alabama's SIP.

This action pertains only to the $PM_{2.5}$ SILs promulgated in EPA's NNSR regulations at 40 CFR 51.165(b)(2), which were not vacated by the D.C. Circuit. Unlike the SILs promulgated in the PSD regulations (40 CFR 51.166, 52.21), the SILs promulgated in the NNSR regulations at 40 CFR 51.165(b)(2) do not serve to exempt a source from conducting a cumulative air quality analysis. Rather, the SILs promulgated at 40 CFR 51.165(b)(2) establish levels at which a proposed new major source or major modification locating in an area designated as attainment or unclassifiable for any NAAQS would be considered to cause or contribute to a violation of a NAAQS in any area. For this reason, the D.C. Circuit left the $PM_{2.5}$ SILs at 40 CFR 51.165(b)(2) in place, and EPA can consider ADEM's request that these SILs be approved as part of Alabama's NNSR program.

F. Fugitive Emissions Interim Rule

On December 19, 2008, EPA issued a final rule revising the requirements of the NSR permitting program regarding the treatment of fugitive emissions. *See* ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions,'' Final Rule, 73 FR 77882 (the ''Fugitive Emissions Rule''). The final rule required fugitive emissions to be included in determining whether a physical or operational change results in a major modification only for sources in industries that have been designated through rulemaking under section 302(j)[15] of the CAA. As a result of EPA granting the Natural Resource Defense Council's petition for reconsideration on the Fugitive Emissions Rule[16] on March 31, 2010, EPA stayed the rule for 18 months to October 3, 2011. The stay allowed the Agency time to propose, take comment and issue a final action regarding the inclusion of fugitive emissions in NSR applicability determinations. On March 30, 2011 (76 FR 17548), EPA proposed an interim rule (the ''Fugitive Emissions Interim Rule'') which superseded the March 31, 2010, stay and clarified and extended the stay of the Fugitive Emission Rule until EPA completes its reconsideration. The Fugitive Emissions Interim Rule simply reverts the CFR text back to the language that existed prior to the Fugitive Emissions Rule changes in the December 19, 2008, rulemaking. EPA plans to issue a final rule affirming the interim rule as final. The Fugitive Emissions Interim Rule will remain in effect until EPA completes its reconsideration.

III. What is EPA's analysis of ADEM's SIP revision?

Alabama currently has a SIP-approved NSR program for new and modified stationary sources found in ADEM regulations at Chapter 335–3–14. ADEM's NNSR preconstruction regulations are found at Chapter 335–3–14–.05, and apply to major stationary sources or modifications constructed in or impacting upon a nonattainment area as required under part D of title I of the CAA with respect to the NAAQS. The revisions to Chapter 335–3–14–.05 that EPA is now proposing to approve into the SIP were provided to update the existing provisions to be consistent with the current federal NNSR rules, including the WEPCO Rule, 2002 NSR Reform Rule (and associated Reconsideration Rule and Vacated Elements Rule), Phase 2 Rule, NSR $PM_{2.5}$ Rule, $PM_{2.5}$ PSD-Increment-SILs-SMC Rule, and Fugitive Emissions Interim Rule. These changes to ADEM's regulations became state effective on May 23, 2011. EPA is proposing to approve the changes to Chapter 335–3–14–.05, with certain exceptions noted below, into Alabama's SIP to be consistent with federal NNSR regulations (at 40 CFR 51.165) and the CAA.

[14] Although the SMC provisions were approved into the Alabama SIP in a September 26, 2012, final rule (77 FR 59100), the January 22, 2013, D.C. Circuit decision vacated the SMCs on the basis that EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for $PM_{2.5}$ be included in all PSD permit applications. EPA accordingly removed the $PM_{2.5}$ SMC of 4 $\mu g/m^3$ from federal PSD regulations on December 9, 2013 (*See* 78 FR 73693), and advised states to remove the $PM_{2.5}$ provisions from their state PSD regulations and SIPs. For more information on states with approved SMC provisions in their SIPs, see the December 9, 2013, final rule.

[15] Pursuant to CAA section 302(j), examples of these industry sectors include oil refineries, Portland cement plants, and iron and steel mills.

[16] On April 24, 2009, EPA agreed to reconsider the approach to handling fugitive emissions and granted a 3-month administrative stay of the Fugitive Emissions Rule. The administrative stay of the Fugitive Emissions Rule became effective on September 30, 2009. EPA put an additional three-month stay in place from December 31, 2009, until March 31, 2010.

A. WEPCO Rule

As stated in Section II, the WEPCO Rule made several changes to NNSR regulations located at 40 CFR 51.165. The definitions established in the WEPCO Rule that persist through the most recent CFR, including those for EGU, CCT, CCT demonstration project, temporary CCT demonstration project, and repowering are all included in the May 2, 2011 ADEM SIP submittal at Chapter 335–3–14–.05. The SIP submittal also adopts exemptions for temporary CCT demonstration projects from NNSR requirements as promulgated in the WEPCO Rule. EPA has preliminarily determined that the May 2, 2011 submittal is consistent with the federal regulations for NNSR promulgated in the WEPCO Rule.

B. NSR Reform

Some of the changes to Alabama's NNSR rules that EPA is now proposing to approve into the Alabama SIP were established to update Alabama's existing NNSR program to meet the requirements of the 2002 NSR Reform Rule (and associated Reconsideration Rule and Vacated Elements Rule) and the 2007 Reasonable Possibility Rule (collectively, the ''NSR Reform Rules''). On May 1, 2008, EPA approved Alabama's June 16, 2006, SIP submission to adopt PSD provisions consistent with the requirements of the NSR Reform Rules. *See* 73 FR 23957. Alabama's May 2, 2011, SIP revision adopts NNSR changes pursuant to the NSR Reform Rules regarding the following definitions, revisions and provisions at Chapter 335–3–14 .05: Regulated NSR pollutant; major modification; net emissions increase; credit for increases and decreases in actual emissions; emissions unit; actual emissions; lowest achievable emission rate; construction; pollution prevention; significant emissions increase; projected actual emissions; major NNSR program; continuous emissions monitoring system; predictive emissions monitoring system; continuous parameter monitoring system; continuous emissions rate monitoring system; baseline actual emissions; project; best available control technology; federal land manager; PSD permit; NNSR applicability procedures; actual-to-projected-actual applicability tests; and PAL and recordkeeping provisions.

As noted above, the submittal originally included an ''actual-to-potential'' applicability test (ADEM Rule 335–3–14–.05(1)(h)) that was inconsistent with the federal rules at 40 CFR 51.165. However, on June 5, 2015, ADEM submitted a letter to EPA formally withdrawing the ''actual-to-potential'' applicability test from the May 2, 2011 SIP revision (*See* Docket No. EPA–R04–OAR–2012–0079). Therefore, this applicability test is no longer before EPA for consideration and will not be incorporated into Alabama's SIP.

State agencies may meet the requirements of 40 CFR part 51, and the NSR Reform Rules, with different-but-equivalent regulations. More information on regulations developed by ADEM which are different-but-equivalent to federal rules are included in Section III.G below. EPA has preliminarily determined that the proposed SIP revisions to adopt the NSR Reform Rules, including those which differ from the federal rule, are consistent with program requirements for the preparation, adoption and submittal of implementation plans for NNSR set forth at 40 CFR 51.165, including the changes to the federal NNSR regulations promulgated in the NSR Reform Rules.

C. Phase 2 Rule

The Phase 2 Rule established the NSR requirements needed to implement the 8-hour ozone NAAQS and made changes to federal NNSR regulations. Pursuant to these requirements, states were required to submit SIP revisions adopting the relevant federal requirements of the Phase 2 Rule (at 40 CFR 51.165 and 51.166) into their SIP no later than June 15, 2007.[17] Alabama's May 2, 2011, SIP revision adopts the following relevant NNSR provisions promulgated in the Phase 2 Rule (at 40 CFR 51.165) into the Alabama SIP at Chapter 335–3–14–.05 to be consistent with federal NNSR permitting regulations: (1) Thresholds to establish a major stationary source (as codified at 40 CFR 51.165(a)(1)(iv)(A)(*1*)–(*3*); (2) provisions establishing that significant net increases for NO_X are considered significant for ozone, and that significant emissions of ozone precursors include NO_X (as codified at 40 CFR 51.165(a)(1)(v)(E) and (a)(1)(x)); (3) provisions that provide offset credits for shutting down or curtailing operation of existing sources (as codified at 40 CFR 51.165(a)(3)(ii)(C)); (4) a provision establishing that the requirements applicable to major stationary sources and major modifications of VOC shall apply to NO_X emissions from major stationary sources and major modifications of NO_X in an ozone transport region or in any ozone nonattainment area (as codified at 40 CFR 51.165(a)(8)); and (5) a provision establishing that requirements applicable to major stationary sources and major modifications of PM_{10} shall apply to major stationary sources and major modifications of PM_{10} precursors (as codified at 40 CFR 51.165(a)(10)). EPA has preliminarily determined that the May 2, 2011 submittal is consistent with the federal NNSR regulations promulgated in the Phase 2 Rule.

D. NSR $PM_{2.5}$ Rule

ADEM's May 2, 2011, SIP revision establishes that the State's existing NSR permitting program requirements for NNSR apply to the $PM_{2.5}$ NAAQS and certain precursors. Specifically, the SIP revision adopts the following NSR $PM_{2.5}$ Rule NNSR provisions into the Alabama SIP: (1) The requirement for NNSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants (*e.g.*, SO_2 and NO_X, as codified at 40 CFR 51.165(a)(1)(xxxvii)(C)); (2) the significant emission rates for direct $PM_{2.5}$ and precursor pollutants (SO_2 and NO_X, as codified at 40 CFR 51.165(a)(1)(x)(A)); (3) clarification of the NNSR $PM_{2.5}$ (and general criteria air pollutant) emission offsets (pursuant to 51.165(a)(9)); (4) the NNSR requirement that condensable PM_{10} and $PM_{2.5}$ emissions be accounted for in applicability determinations and emission limits for permitting (as codified at 40 CFR 51.165(a)(1)(xxxvii)(D)); and (5) the basic interpollutant trading policy for $PM_{2.5}$ precursors (as codified at 40 CFR 51.165(a)(11)). For the reasons discussed below, the EPA is proposing to approve these revisions into the Alabama SIP.

ADEM's submission of revisions to its NNSR regulations at Chapter 335–3–14–.05 identify SO_2 as a $PM_{2.5}$ precursor and NO_X as a presumed $PM_{2.5}$ precursor while VOCs and ammonia are presumed not to be $PM_{2.5}$ precursors for a $PM_{2.5}$ NAA. These revisions are consistent with the 2008 NSR $PM_{2.5}$ Rule as developed pursuant to subpart 1 of the Act.[18]

Alabama's May 2, 2011, SIP revision originally adopted into the SIP at Chapter 335–3–14.05(3)(g) the elective interpollutant trading policy, set forth at 40 CFR 51.165(a)(11), and the preferred trading ratios, provided in the preamble to the NSR $PM_{2.5}$ Rule, for the purpose of offsets under the $PM_{2.5}$ NNSR

[17] On June 21, 2006, Alabama submitted a SIP revision which adopted the PSD provisions established in the Phase 2 Rule (at 40 CFR 51.166) recognizing NO_X as an ozone precursor. EPA took final action to approve this SIP revision on May 1, 2008 (73 FR 23957).

[18] See Section II for a discussion of why the additional requirements of subpart 4 of the Act do not apply to Alabama's May 2, 2011 SIP submittal for revisions to the NNSR program.

program. As established in EPA's July 21, 2011, Interpollutant Trading Memorandum, the preferred precursor trading ratios and technical demonstration included in the NSR $PM_{2.5}$ Rule are no longer considered presumptively approvable. Therefore any precursor trading ratios submitted to EPA for approval, as part of the NSR SIP for a $PM_{2.5}$ NAA must be accompanied by a technical demonstration showing the suitability of the ratios for that particular NAA. Consequently, prior to approving a request by a major stationary source or source with a major modification in Alabama to obtain offsets through interpollutant trading, the State of Alabama would first be required, pursuant to 51.165(a)(11), to revise its SIP to adopt appropriate trading ratios. ADEM would need to submit to EPA a technical demonstration showing how either the preferred ratios established in the NSR $PM_{2.5}$ Rule or the State's own ratios are appropriate for the state's particular $PM_{2.5}$ nonattainment areas as well as a revision to the NSR program adopting the ratios into the SIP. EPA would then have to approve the demonstration and ratios into the Alabama SIP prior to any major stationary source or major modification obtaining offsets through the interpollutant trading policy.

Alabama's May 2, 2011, SIP revision relied on EPA's technical demonstration in the NSR $PM_{2.5}$ Rule for the preferred ratios, which, as explained above, the Agency has now deemed unapprovable. However, on October 9, 2014, ADEM submitted a letter to EPA formally withdrawing the offset ratios (or interpollutant trading ratios) from the May 2, 2011 SIP revision (*See* Docket No. EPA–R04–OAR–2012–0079). Therefore, these ratios are no longer before EPA for consideration, while the interpollutant trading provisions themselves remain before EPA. The Agency continues to support the basic policy that sources may offset increases in emissions of direct $PM_{2.5}$ or of any $PM_{2.5}$ precursor in a $PM_{2.5}$ NAA with actual emissions reductions in direct $PM_{2.5}$ or $PM_{2.5}$ precursor, respectively, in accordance with offset ratios as approved in the SIP for the applicable NAA. Alabama's adoption of the interpollutant trading policy without trading ratios does not in any way allow a new major stationary source or major modification in the state to obtain offsets through interpollutant trading, nor does it affect the approvability of ADEM's May 2, 2011, SIP revision. EPA has preliminarily determined that the May 2, 2011 submittal is consistent with the federal regulations for NNSR promulgated in the NSR $PM_{2.5}$ Rule.

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

The only portion of the October 20, 2010, $PM_{2.5}$ PSD-Increment-SILs-SMC Rule concerning NNSR considered for this proposed rulemaking is the table modified to include SILs for $PM_{2.5}$, promulgated at 40 CFR 51.165(b)(2). *See* 75 FR 64864. As discussed above, these SILs are used to determine whether a new major stationary source or major modification that would be located in an area designated as in attainment or unclassifiable would cause or contribute to a NAAQS violation in any locality. These SILs were not affected by *Sierra Club* v. *EPA*, 705 F.3d at 458, which addressed PSD SILs that served to exempt a source from conducting a cumulative air quality analysis. Accordingly, Alabama's May 2, 2011 submittal revises the definition of ''Significant Impact'' at ADEM Rule 335–3–14.05(2)(aaa) to incorporate the $PM_{2.5}$ SILs from 40 CFR 51.165(b)(2). An additional revision to ADEM Rule 335–3–14–.05(2)(aaa)—unrelated to the $PM_{2.5}$ PSD-Increment-SILs-SMC Rule—eliminates the annual PM_{10} SIL of 1 μg/m³, which had previously been approved into the Alabama SIP. However, the annual PM_{10} SIL of 1 μg/m³ is separately included in ADEM Rule 335–3–14–.03(1)(g), ''Standards for Granting Permits.'' ADEM Rule 335–3–14–.03(1)(g) incorporates the requirements of 40 CFR 51.165(b) and has been approved by EPA as part of Alabama's SIP. 77 FR 59101, 59105 (Sept. 26, 2012) (identifying ADEM Rule 335–3–14–.03, State effective date May 23, 2011, as part of Alabama's SIP). Therefore, the removal of the annual PM_{10} SIL from ADEM Rule 335–3–14.05(2)(aaa) does not interfere with Alabama's compliance with 40 CFR 51.165(b). EPA proposes to approve the aforementioned revisions to the SILs in ADEM's May 2, 2011 SIP submittal.

F. Fugitive Emissions Interim Rule

Due to the March 30, 2011, Fugitive Emissions Interim Rule (*See* 76 FR 17548), the CFR has been converted back to the language that existed prior to the Fugitive Emissions Rule changes in the December 19, 2008, rulemaking. Many of the affected rules are entirely new to the ADEM NNSR Chapter. For example, the definition of fugitive emissions (40 CFR 51.165(a)(ix)) is added, not revised, at Chapter 335–3–14–.05(2)(t). Alabama's May 2, 2011, SIP submittal, having been submitted after the Fugitive Emissions Interim Rule, adopts revisions regarding fugitive emissions that are mostly consistent with the current CFR. One provision included in the May 2, 2011, submittal at ADEM Rule 335–3–14–.05(2)(c)3, regarding the exclusion of fugitive emissions from the determination of creditable emission increases and decreases in the definition of ''net emissions increase,'' was stayed indefinitely in the Fugitive Emissions Interim Rule. Therefore, EPA is proposing to approve Alabama's adoption of regulations affecting fugitive emissions at ADEM Rule 335–3–14-.05, except the provision at ADEM Rule 335–3–14–.05(2)(c)3. For more background on the Fugitive Emissions Interim Rule, see Section II above, or the March 30, 2011, rulemaking.

G. Different-but-Equivalent Regulations

Alabama currently has a SIP-approved nonattainment NSR program for new and modified stationary sources. EPA is now proposing to approve revisions to Alabama's existing NNSR program in the SIP. State agencies may meet the requirements of 40 CFR part 51, including the changes made by the NSR Reform Rules, with different-but-equivalent regulations. The May 2, 2011, submission to revise the Alabama SIP contains several rules that EPA has determined are different-but-equivalent regulations. The Agency's analysis for each of these items is included below.

1. ''Reasonable Possibility'' Provisions

The ''reasonable possibility'' standard identifies, for sources and reviewing authorities, the circumstances under which a major stationary source undergoing a physical or operational change that is not projected to result in an emissions increase above NSR applicability thresholds must keep post-change emissions records. EPA's December 2007 action clarified the meaning of the term ''reasonable possibility'' through changes to the federal rule language in 40 CFR parts 51 and 52. EPA's December 2007 rule also acknowledged that State and local authorities may adopt or maintain NSR program elements that have the effect of making their regulations more stringent than the federal rules and instructed those State and local authorities to submit notice to EPA to acknowledge that their regulations fulfill the requirements of the federal regulations. Unlike the federal rules, which only require those projects that have a reasonable possibility that the project may result in a significant emissions increase to keep records, ADEM's rules require all projects that use the actual-to-projected-actual applicability test to keep records. Therefore, all projects undergo agency review. If ADEM

determines that there is a reasonable possibility that the project may result in a significant emissions increase, then the owner or operator must submit those records to the Director, must monitor and maintain a record of annual emissions for 5 years (or 10 years depending upon the specific circumstances), and must submit annual reports. These recordkeeping, monitoring, and reporting requirements apply to all facilities—EGUs and non-EGUs. Although the changes to the reasonable possibility provisions identified above are different than the federal rules, ADEM's approach is at least as stringent as the federal rules and is approvable.

2. PAL Provisions

Alabama's actuals PAL provisions in ADEM Rule 335–3–14–.05(23) differ from the federal regulations in several ways. First, at subparagraph (23)(a)2., ADEM omitted the provision which allows facilities utilizing a PAL to remove previously set emissions limitations that the major stationary source used to avoid NNSR program applicability. Similarly, at subparagraph (23)(i)5., ADEM added the provision that sources must comply with any State or federal applicable requirements that may have applied during the PAL effective period, including those emission limitations that the source used to avoid NNSR applicability. According to Alabama's submittal, it is ADEM's intent that previously set limits (*e.g.*, BACT, RACT, NSPS, synthetic minor limit, etc.) remain intact during the PAL effective period and after its expiration. EPA concludes that ADEM's approach in these regulatory provisions is at least as stringent as the federal regulations and therefore is approvable.

ADEM's method of setting a PAL at subparagraph (23)(f) also differs slightly from the federal rules. The federal rules state at 40 CFR 51.165(f)(6)(ii) that emissions from units on which actual construction began after the 24-month period chosen for setting the PAL ''must be added to the PAL level in an amount equal to the potential to emit of the units.'' ADEM's rule differs in that it limits inclusion of emissions based on a unit's potential to emit to only those units that began operation less than 24 months prior to the submittal of the PAL application. Under ADEM's rule, baseline actual emissions from units on which actual construction began after the beginning of the 24-month period and that commenced operation 24 months or more prior to the submittal of the PAL application must be added to the PAL based upon actual emissions during any 24-month period since the unit commenced operation. According to Alabama's SIP submittal, it is ADEM's intent that the PAL be based upon true actual emissions, and ADEM considers units that have been operating more than 24 months to be existing units that should be included in the PAL based on their actual emissions rather than their potential to emit. EPA concludes that ADEM's approach to this provision is at least as stringent as the federal regulations and is therefore approvable.

At subparagraph (23)(n)1., ADEM has omitted the requirement in the federal regulations to submit a semi-annual report within 30 days of the end of the PAL reporting period. Because the facility's title V permit would require these reports to be submitted, its inclusion in the NNSR regulations is not necessary. EPA's concludes that ADEM's approach to PAL reporting requirements is at least as stringent as the federal rules and is approvable.

Finally, Alabama's PAL rules differ from the federal rules in that they do not expressly state that a PAL permit must require that emissions calculations for PAL compliance purposes include ''malfunction'' emissions. *Compare* ADEM Rule 335–3–14–.05(23)(g)4 to 40 CFR 51.165(f)(7)(iv). However, EPA does not read Alabama's rules as authorizing sources to exclude malfunction emissions from PAL compliance calculations. Rather, consistent with 40 CFR 51.165(f)(7)(iv), EPA interprets Alabama's rules to mean that startup and shutdown emissions must be included in emission calculations for PAL compliance purposes in addition to emissions that occur during normal operations and malfunctions. EPA Region 4 and ADEM discussed this issue via conference call on January 27, 2015. ADEM agreed with this interpretation of ADEM Rule 335–3–14–.05(23)(g)4 during the call and confirmed that ADEM would require sources to include malfunction emissions in emission calculations for PAL compliance purposes, just as compliance is determined with respect to other enforceable limits. In a document attached to an email dated February 3, 2015, ADEM provided written clarification of several items as a follow-up to the January 27, 2015 conference call, including the treatment of malfunction emissions in nonattainment PALs. A memo summarizing the call and ADEM's February 3, 2015 email and attachment are in the Docket for this proposed rulemaking. Therefore, EPA concludes that while the wording of ADEM Rule 335–3–14–.05(23)(g)4 differs from the federal rule, ADEM's approach is at least as stringent as the federal rules and is approvable.

3. Emissions Associated With Malfunctions

One notable difference from the federal rules is that the Alabama rules do not contain provisions accounting for ''malfunction'' emissions in the calculation of ''baseline actual emissions'' and ''projected actual emissions'' (ADEM Rule 334–3–14–.05(2)(nn) and (uu)). Alabama states that it will rely only on quantifiable emissions that can be verified so as to provide a more accurate estimation of the emissions increases associated with a project. Because Alabama will be consistently applying this approach for both ''projected actual emissions'' and ''baseline actual emissions'' and because this approach will not prevent malfunctions from being considered as exceedances of applicable standards, EPA has determined that this difference does not make Alabama's NNSR program less stringent than the federal program.

IV. Incorporation by Reference

In this action, 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 portions of ADEM Regulation Chapter 335–3–14–.05 entitled ''Air Permits Authorizing Construction in or Near Non-Attainment Areas,'' effective May 23, 2011, with revisions and additions to *applicability, definitions, permitting requirements, offset rules, area classifications, air quality models, control technology review, air quality monitoring, source information, source obligation, innovative control technology*, and *actuals PALs*, and with administrative changes throughout. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Proposed Action

EPA is proposing to approve the portion of Alabama's May 2, 2011 submission that makes changes to Alabama's SIP-approved NNSR regulations set forth at ADEM Rule 335–3–14–.05, with the exceptions noted above. ADEM submitted the proposed changes to its NNSR SIP to be consistent with amendments to the federal regulations made by the WEPCO Rule, the 2002 NSR Reform Rule (and

associated Reconsideration Rule and Vacated Elements Rule), Phase 2 Rule, NSR $PM_{2.5}$ Rule, $PM_{2.5}$ PSD Increment-SILs-SMC Rule, and the Fugitive Emissions Interim Rule. The Agency has made the preliminary determination that the proposed changes to Alabama's NNSR SIP are approvable because they are consistent with section 110 of the CAA and EPA regulations.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: August 20, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2015–21537 Filed 8–31–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0289; FRL 9933–19–Region 9]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Imperial County Air Pollution Control District (ICAPCD or the District) portion of the California State Implementation Plan (SIP). We propose to approve the following SIP demonstration from ICAPCD: Final 2009 Reasonably Available Control Technology State Implementation Plan, July 13, 2010. This demonstration addresses the 1997 8-hour National Ambient Air Quality Standards (NAAQS) for ozone. This submitted SIP revision contains ICAPCD's negative declarations for volatile organic compound (VOC) source categories. We propose to approve the submitted reasonably available control technology (RACT) SIP revision under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by *October 1, 2015.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2015–0289, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to the EPA, your email address will be automatically captured and included as part of the public comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: James Shears, EPA Region IX, (213) 244–1810, *shears.james@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal