IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Tennessee Rules 1200–03–09–.01, *Construction Permits,*[8] and 1200–03–21–.01, *General Alternate Emission Standard,* state effective on April 22, 2021. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Proposed Action

EPA is proposing to approve changes to the Tennessee SIP, and convert the conditional approval for element C, Prong 3, and element J, for the 2015 8-hour ozone Infrastructure SIP to a full approval. Specifically, EPA is proposing to approve changes to Tennessee Rules 1200–03–09–.01, *Construction and Operating Permits,* and 1200–03–21–.01, *General Alternate Emission Standard.*

VI. Statutory and Executive Order Reviews

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

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed 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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: August 18, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–18199 Filed 8–23–22; 8:45 am]

BILLING CODE 6560–50–P

[8] EPA is not proposing to incorporate the April 22, 2021, state effective version of: 1200–03–09–.01(1)(a); 1200–03–09–.01(1)(d); 1200–03–09–.01(1)(h); 1200–03–09–.01(1)(j); 1200–03–09–.01(4)(a)7(vi); 1200–03–09–.01(4)(b)24(XVII); 1200–03–09–.01(4)(b)29; 1200–03–09–.01(4)(b)47(i)(IV); 1200–03–09–.01(4)(j)3; 1200–03–09–.01(4)(l)2(iii); 1200–03–09–.01(5)(b)1(x)(VII); the $PM_{2.5}$ annual and 24-hour averaging time as part of subparagraph 1200–03–09–.01(5)(b)(1)(xix); 1200–03–09–.01(5)(b)2(viii)(III); 1200–03–09–.01(5)2(iii)(II); and 1200–03–09–.01(5)(b)3(i)(III). These provisions are either not approved into the SIP or the April 22, 2021, version of the rule contains language changes that are not before EPA for approval into the SIP. If EPA finalizes this action, the Agency will update the SIP table at 40 CFR 52.2220(c) to reflect these exceptions.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0867; FRL–9377–01–R4]

Air Plan Approval; North Carolina; Prevention of Significant Deterioration for Mecklenburg County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a portion of a State Implementation Plan (SIP) revision to the Mecklenburg County portion of the North Carolina SIP, hereinafter referred to as the Mecklenburg County Local Implementation Plan (LIP). The revision was submitted through the North Carolina Division of Air Quality (NCDAQ), on behalf of Mecklenburg County Air Pollution Control (MCAQ), via a letter dated April 24, 2020, which was received by EPA on June 19, 2020. This SIP revision includes changes to Mecklenburg County Air Pollution Control Ordinance (MCAPCO) rules incorporated into the LIP regarding Prevention of Significant Deterioration (PSD) permitting to address changes to the Federal new source review (NSR) regulations in recent years. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before September 23, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0867 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on

making effective comments, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Akers can be reached via electronic mail at *akers.brad@epa.gov* or via telephone at (404) 562–9089.

SUPPLEMENTARY INFORMATION:

I. Background and Overview of Mecklenburg LIP

The Mecklenburg LIP was submitted to EPA on June 14, 1990, and EPA approved the plan on May 2, 1991. *See* 56 FR 20140. Mecklenburg County is now requesting that EPA approve changes to the LIP for, among other things, general consistency with the North Carolina SIP.[1] Mecklenburg County prepared three submittals in order to update the LIP and reflect regulatory and administrative changes that NCDAQ made to the North Carolina SIP since EPA's 1991 LIP approval.[2] The three submittals were submitted as follows: NCDAQ transmitted the October 25, 2017, submittal to EPA but later withdrew it from review through a letter dated February 15, 2019. On April 24, 2020, NCDAQ resubmitted the October 25, 2017, update to EPA and submitted the January 21, 2016, and January 14, 2019, updates. Each of these submittals were properly noticed to the public in compliance with 40 CFR 51.102.

This proposed rulemaking would modify the LIP by updating the PSD program rules incorporated into the LIP in Rule 2.0530, *Prevention of Significant Deterioration,* and by adding into the LIP rule 2.0544, *Prevention of Significant Deterioration Requirements for Greenhouse Gases.*

II. Background on PSD Updates

The PSD program is a preconstruction permitting program that requires ''major'' stationary sources of air pollution to obtain a PSD permit prior to beginning construction in areas classified as either in attainment with the National Ambient Air Quality Standards (NAAQS) or unclassifiable.[3] *See* CAA section 165. EPA requires PSD SIPs to meet the standards codified at 40 CFR 51.166.[4] Over the years, EPA has updated these rules, and as a result of these amendments, states and localities similarly are required to update their SIP-approved rules to ensure compliance with the PSD standards set forth at 40 CFR 51.166.

In this Notice of Proposed Rulemaking (NPRM), EPA is proposing to approve Mecklenburg's PSD rule revisions as meeting the requirements of the CAA and 40 CFR 51.166. EPA most recently approved Mecklenburg's PSD rules on May 2, 1991, with a local effective date of June 14, 1990. *See* 56 FR 20140. Since then, EPA's PSD permitting rules have undergone a number of changes. For historical context, this NPRM first provides a summary of significant amendments to EPA's PSD permitting rules made after the date of approval of Mecklenburg's LIP-approved PSD permitting rules. The NPRM then discusses the PSD rules contained in the proposed SIP revision.

A. 2002 NSR Reform Rules

On December 31, 2002, EPA published final rule revisions to 40 CFR parts 51 and 52, regarding the CAA's PSD and Nonattainment New Source Review (NNSR) programs. *See* 67 FR 80186 (hereinafter referred to as the 2002 NSR Rule). The revisions included five changes to the major NSR program that would reduce regulatory burdens, maximize operating flexibility, improve environmental quality, provide additional certainty, and promote administrative efficiency. Initially, these updates to the Federal NSR program included the revision of baseline actual emissions and adoption of actual-to-projected-actual emissions methodology, plant-wide applicability limits (PALs), Clean Units, and pollution control projects (PCPs). The final rule also codified a longstanding policy regarding the calculation of baseline emissions for electric utility steam generating units and the definition of ''regulated NSR pollutant'' that clarifies which pollutants are regulated under the Act for purposes of major NSR.

Following publication of the 2002 NSR Rule, EPA received numerous petitions requesting reconsideration of several aspects of the final rule, along with portions of EPA's 1980 NSR Rules.[5] On July 30, 2003, EPA granted petitions for reconsideration of six issues presented by the petitioners and opened a new comment period for the public.[6] As a result of the reconsideration, on November 7, 2003 (68 FR 63021), EPA published the NSR Reform Reconsideration Rule, which made two clarifications to EPA's underlying NSR rules. These two clarifications included: (1) adding the definition of ''replacement unit'' to indicate that it is considered an existing unit in terms of major NSR applicability, and (2) specifying that the PAL baseline calculation procedures for newly constructed units do not apply to modified units. The 2002 NSR Rule and the NSR Reform Reconsideration Rule are hereinafter collectively referred to as the ''2002 NSR Reform Rules.''

The 2002 NSR Reform Rules were challenged in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), and the court issued a decision on the challenges on June 24, 2005. *See New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005). In summary, the D.C. Circuit vacated portions of EPA's NSR Reform 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), 40 CFR 51.166(r)(6), and 40 CFR 51.165(a)(6) to EPA, 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

[1] Hereinafter, the terms ''North Carolina SIP'' and ''SIP'' refer to the North Carolina regulatory portion of the North Carolina SIP (*i.e.,* the portion that contains SIP-approved North Carolina regulations).

[2] The Mecklenburg County, North Carolina revision that is dated April 24, 2020, and received by EPA on June 19, 2020, is comprised of three previous submittals—one dated January 21, 2016; one dated October 25, 2017; and one dated January 14, 2019.

[3] A separate NSR preconstruction permitting program applies to nonattainment areas pursuant to CAA section 173. NSR permits in nonattainment areas are referred to as nonattainment NSR (NNSR) permits.

[4] Related rules setting forth the Federal PSD program for areas without an approved PSD permitting program are codified at 40 CFR 52.21.

[5] *See* 45 FR 52676 (August 7, 1980) for EPA's 1980 NSR Rules.

[6] For full details on the six issues reconsidered by EPA, refer to the July 30, 2003, publication. *See* 68 FR 44624.

Rules to exclude the portions that were vacated by the D.C. Circuit.

Meanwhile, EPA continued to move forward with its evaluation of the portion of its NSR Reform Rules that were remanded by the D.C. Circuit. On March 8, 2007 (72 FR 10445), EPA responded to the Court's remand regarding the recordkeeping provisions by proposing two alternative options to clarify what constitutes ''reasonable possibility'' and when the ''reasonable possibility'' recordkeeping requirements apply. The ''reasonable possibility'' standard identifies the circumstances under which a major stationary source must keep records for modifications that do not trigger major NSR. EPA later finalized these changes on December 21, 2007 (72 FR 72607).

Separately from the petitions received that led to the 2002 NSR Reconsideration Rule, EPA received another petition for reconsideration on July 11, 2003. Specifically, the petitioner requested EPA to reconsider the inclusion of ''fugitive emissions'' when assessing whether a proposed physical or operational change qualified as a ''major modification.'' On November 13, 2007, EPA granted the petition for reconsideration, and on December 19, 2008, finalized the revision of the language to clarify which types of sources were required to include ''fugitive emissions'' in their calculations. *See* 73 FR 77882 (hereinafter referred to as the Fugitive Emissions Rule).

Finally, on February 17, 2009, EPA received a petition for reconsideration of the Fugitive Emissions Rule. Due to this petition, and after several stays,[7] EPA established an indefinite stay of the Fugitive Emissions Rule language on March 30, 2011 (76 FR 17548). This indefinite stay also clarified EPA's intent to ''correct ambiguity'' in the March 31, 2010 stay. With the March 30, 2011, stay, EPA specified which portions of 40 CFR 51.165, 40 CFR 51.166, and 40 CFR 52.21 were stayed indefinitely, which were reinstated, and which were revised, in order to revert the Federal rules to the regulatory language that existed prior to the Fugitive Emissions Rule.[8]

In summary, after several court decisions and public petitions, the Federal major NSR program (found in 40 CFR 51.165, 51.166, and 52.21) no longer includes the provisions related to Clean Units or PCPs that were part of the 2002 NSR reform rules. Additionally, an indefinite stay has been placed on the Fugitive Emissions Rule. Mecklenburg County is adopting most of the surviving provisions from the 2002 NSR Reform Rules, with changes. More details on Mecklenburg County's adoption of the 2002 NSR Reform Rules and EPA's analysis of its submittal can be found in section III.A of this NPRM.

B. Fine Particulate Matter ($PM_{2.5}$) NAAQS

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

On May 16, 2008 (73 FR 28321), EPA published the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' Final Rule (hereinafter referred to as the NSR $PM_{2.5}$ Rule). The NSR $PM_{2.5}$ Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. As indicated in the NSR $PM_{2.5}$ Rule, major stationary sources seeking permits must begin directly satisfying the $PM_{2.5}$ requirements, as of the effective date of the rule, rather than relying on PM_{10} as a surrogate, with two exceptions. The first exception was a ''grandfathering'' provision in the Federal PSD program at 40 CFR 52.21(i)(1)(xi). This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008, effective date of the May 2008 final rule. The second exception was that states with SIP-approved PSD programs could continue to implement a policy in which PM_{10} served as a surrogate for $PM_{2.5}$ for up to three years (until May 2011) or until the individual revised state PSD programs for $PM_{2.5}$ are approved by EPA, whichever came first.[9]

On February 11, 2010 (75 FR 6827), EPA proposed to repeal the grandfathering provision for $PM_{2.5}$ contained in the Federal PSD program at 40 CFR 52.21(i)(1)(xi) and to end early the PM_{10} Surrogate Policy applicable in states that have a SIP-approved PSD program. In support of this proposal, EPA explained that the $PM_{2.5}$ implementation issues that led to the adoption of the PM_{10} Surrogate Policy in 1997 had been largely resolved to a degree sufficient for sources and permitting authorities to conduct meaningful permit related $PM_{2.5}$ analyses. On May 18, 2011 (76 FR 28646), EPA took final action to repeal the $PM_{2.5}$ 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)[10] 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 p.m.$_{10}$ Surrogate Policy to satisfy the PSD requirements for $PM_{2.5}$ unless the application includes a valid surrogacy demonstration.

The NSR $PM_{2.5}$ Rule also established the following NSR requirements for PSD to implement the $PM_{2.5}$ NAAQS: (1) required NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) established significant emission rates for direct $PM_{2.5}$ and precursor pollutants (including sulfur dioxide (SO_2) and nitrogen oxides (NO_X)); and (3) required states to account for gases that condense to form particles (''condensables'') in $PM_{2.5}$ and PM_{10} emission limits in PSD or NNSR permits.

2. $PM_{2.5}$ Condensables Correction

Among the changes included in the NSR $PM_{2.5}$ Rule mentioned above, EPA also 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

[7] EPA originally established a three-month stay that became effective September 30, 2009 (74 FR 50115), which was later extended for an additional three months, effective December 31, 2009. *See* 74 FR 65692. In order to allow for more time for reconsideration and for public comment on any potential revisions to the Fugitive Emissions Rule, EPA established a longer 18-month stay that became effective on March 31, 2010. *See* 75 FR 16012.

[8] In this NPRM, EPA is not proposing to act on certain provisions addressing the treatment of fugitive emissions, as provided in EPA's December 19, 2008, rule. *See* 73 FR 77882. Specifically, EPA is not acting on the incorporation by reference of 40 CFR 51.166(b)(2)(v), nor 51.166(b)(3)(iii)(*d*), which were subsequently stayed indefinitely in a March 30, 2011, final rule. *See* 76 FR 17548.

[9] After EPA promulgated the NAAQS for $PM_{2.5}$ in 1997, the Agency issued a guidance document entitled ''Interim Implementation of New Source Review Requirements for $PM_{2.5}$,'' which allowed for the regulation of PM_{10} as a surrogate for $PM_{2.5}$ until significant technical issues were resolved (the ''PM_{10} Surrogate Policy''). John S. Seitz, EPA, October 23, 1997.

[10] 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 p.m.$_{10}$ Surrogate Policy as a means of satisfying the PSD requirements for $PM_{2.5}$. *See* 73 FR 28321.

establishing emissions limitations for PM, $PM_{2.5}$ and PM_{10} in permits.'' *See* 73 FR 28321 at 28348 (May 16, 2008). A similar paragraph added to the NNSR rule did not include ''particulate matter (PM) emissions.'' *See* 40 CFR 51.165(a)(1)(xxxvii)(D).

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

3. $PM_{2.5}$ PSD Increments, Significant Impact Levels (SILs), and Significant Monitoring Concentration (SMC) Rule

On October 20, 2010 (75 FR 64863), EPA published a final rule entitled ''Prevention of Significant Deterioration (PSD) for Particulate Matter less than 2.5 Micrometers ($PM_{2.5}$),'' amending the requirements for $PM_{2.5}$ under the Federal PSD program (also referred to as the $PM_{2.5}$ PSD-Increments-SILs-SMC Rule). The final rule 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 attaining the NAAQS; (2) $PM_{2.5}$ Significant Impact Levels (SILs) for PSD and NNSR; and (3) Significant Monitoring Concentration (SMC) for PSD purposes.

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

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

Mecklenburg County is adopting the Federal provisions relevant to PSD permitting for $PM_{2.5}$ in the April 24, 2020, submittal. This update to Mecklenburg's PSD regulations is necessary and is consistent with North Carolina's rules and the Federal rules. See section III.B of this NPRM for more details on the adoption of provisions to implement $PM_{2.5}$ for PSD permitting.

C. 1997 8-Hour Ozone NAAQS Phase 2 Rule

On November 29, 2005 (70 FR 71612), EPA published a final rule entitled ''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'' (hereinafter referred to as the Phase 2 Rule). The Phase 2 Rule addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS [11] such as reasonably available control technology, reasonably available control measures, reasonable further progress, modeling and attainment demonstrations, NSR, and the impact to reformulated gasoline for the 1997 8-hour ozone NAAQS transition. Additionally, regarding the NSR permitting requirements which are relevant to this proposed action, the Phase 2 Rule included the following provisions: (1) recognized NO_X as an ozone precursor for PSD purposes; and (2) established significant emission rates for the ozone precursors volatile organic compounds (VOCs) and NO_X in the PSD regulations.[12]

The April 24, 2020, LIP revision adopts the relevant PSD provisions of 40 CFR 51.166, thus recognizing NO_X as a precursor to ozone alongside VOCs. The adoption of these provisions is consistent with the Federal PSD provisions as well as North Carolina's rules. More details on Mecklenburg County's adoption of the Ozone Phase 2 Rule provisions for PSD and EPA's analysis of its submittal can be found in section III.C of this NPRM.

D. Greenhouse Gas Tailoring Rule and Biomass Deferral Rule

On January 2, 2011, emissions of greenhouse gases (GHGs) were, for the first time, covered by the PSD and title V operating permit programs.[13] To establish a process for phasing in the permitting requirements for stationary sources of GHGs under the CAA's PSD and title V programs, on June 3, 2010, EPA published a final rule entitled ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (hereinafter referred to as the ''GHG Tailoring Rule''). *See* 75 FR 31514. In Step 1 of the GHG Tailoring Rule, which took effect on January 2, 2011, EPA limited application of PSD and title V requirements to sources and modifications of GHG emissions, but only if they were subject to PSD or title V ''anyway'' due to their emissions of pollutants other than GHGs. These sources and modifications covered under Step 1 are commonly referred to as ''anyway sources'' and ''anyway modifications,'' respectively.

In Step 2 of the GHG Tailoring Rule, which took effect on July 1, 2011, the PSD and title V permitting requirements extended beyond the sources and modifications covered under Step 1 to apply to sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. Step 2 also applied PSD permitting requirements to modifications of otherwise major sources that would increase only GHG emissions above the threshold in the Federal PSD regulations. EPA generally described the

[11] On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million (ppm)—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 (69 FR 23951), as part of the framework to implement the 1997 8-hour ozone NAAQS, EPA promulgated an implementation rule in two phases (Phases 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.

[12] This action also established significant emission rates for PM_{10} and carbon monoxide in EPA's Federal NNSR regulations. MCAQ has not transmitted any changes to its LIP-approved NNSR program at Rule 2.0531, *Sources in Nonattainment Areas,* in the April 24, 2020, LIP revision. There are no designated nonattainment areas in Mecklenburg County at this time.

[13] *See* 75 FR 17004 (April 2, 2010).

sources and modifications covered by PSD under Step 2 of the Tailoring Rule as ''Step 2 sources and modifications'' or ''GHG-only sources and modifications.''

Subsequently, EPA published Step 3 of the GHG Tailoring Rule on July 12, 2012. *See* 77 FR 41051. In the rule, EPA decided against further phase-in of the PSD and title V requirements for sources emitting lower levels of GHG emissions. Thus, the thresholds for determining PSD and title V applicability based on emissions of GHGs remained the same as established in Steps 1 and 2 of the Tailoring Rule.

On June 23, 2014, the U.S. Supreme Court addressed the application of stationary source permitting requirements to GHG emissions in *Utility Air Regulatory Group* v. *EPA,* 573 U.S. 302 (2014) (*UARG*). The Supreme Court upheld EPA's regulation of GHG Step 1—or ''anyway'' sources—but held that EPA may not treat GHGs as air pollutants for the purpose of determining whether a source is a major source (or is undergoing a major modification) and thus require the source to obtain a PSD or title V permit. Therefore, the Court invalidated the PSD and title V permitting requirements for GHG Step 2 sources and modifications.

In accordance with the Supreme Court's decision, on April 10, 2015, the D.C. Circuit issued an Amended Judgment vacating the regulations that implemented Step 2 of the GHG Tailoring Rule, but not the regulations that implement Step 1 of the GHG Tailoring Rule. *See Coalition for Responsible Regulation, Inc.* v. *EPA,* 606 Fed. Appx. 6, 7 (D.C. Cir. 2015). The Amended Judgment specifically vacated the EPA regulations under review (including 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v)) ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emissions increase from a modification.'' *Id.* at 7–8.

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

On July 20, 2011, EPA finalized the Biomass Deferral Rule, which deferred for a period of three years, the application of PSD and Title V permitting requirements to carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources (also known as biogenic CO_2 emissions). *See* 76 FR 43490. During this three-year period, stationary sources that combust biomass and constructed or modified a facility would have avoided the application of PSD to biogenic CO_2 emissions resulting from construction or modification. The deferral applied only to biogenic CO_2 emissions and did not affect other GHGs emitted from the combustion of biomass fuel and decomposition of biogenic material or non-GHG pollutants. Additionally, the deferral only applied to biogenic CO_2 emissions in the PSD and Title V programs; it did not apply to any other EPA programs, such as the GHG Reporting Program.[14]

On July 12, 2013, the D.C. Circuit vacated the Biomass Deferral Rule, but on November 14, 2013, issued an order delaying the vacatur of the Biomass Deferral Rule until the U.S. Supreme Court made a final decision in the *UARG* case related to the GHG Tailoring Rule. *See Center for Biological Diversity* v. *EPA,* 722 F.3d 401. After a final decision was made by the Supreme Court on June 23, 2014, in *UARG,* EPA did not immediately take formal action to remove the Biomass Deferral Rule from the CFR. On July 19, 2021, EPA removed the vacated text of the Biomass Deferral Rule from 40 CFR 51.166(b)(48)(ii)(a), 52.21(b)(49)(ii)(a), 70.2(2), and 71.2(2). *See* 86 FR 37918.

The April 24, 2020, LIP revision adopts the PSD plan requirements of 40 CFR 51.166, and adopts other relevant provisions directly to implement PSD for greenhouse gases, consistent with the Federal PSD provisions as well as North Carolina's rules. See section III.D of this NPRM for more details.

[14] See *https://www.epa.gov/ghgreporting* for information on the GHG Reporting Program.

E. Equipment Replacement Provision

Under Federal regulations, certain activities are not considered to be a physical change or a change in the method of operation at a source, and thus do not trigger NSR review. One category of such activities is routine maintenance, repair and replacement (RMRR). On October 27, 2003 (68 FR 61248), EPA published a rule entitled ''Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion'' (hereinafter referred to as the ''ERP Rule''). The ERP Rule provided criteria for determining whether an activity falls within the RMRR exemption. The ERP Rule also provided a list of equipment replacement activities that are exempt from NSR permitting requirements, while ensuring that industries maintain safe, reliable, and efficient operations that will have little or no impact on emissions. Under the ERP Rule, a facility undergoing equipment replacement would not be required to undergo NSR review if the facility replaced any component of a process unit with an identical or functionally equivalent component. The rule included several modifications to the NSR rules to explain what would qualify as an identical or functionally equivalent component.

Shortly after the October 27, 2003, rule, several parties filed petitions for review of the ERP Rule in the D.C. Circuit. The court stayed the effective date of the rule pending resolution of the petitions. A collection of environmental groups, public interest groups, and states, subsequently filed a petition for reconsideration with EPA, requesting that the Agency reconsider certain aspects of the ERP Rule. EPA granted the petition for reconsideration on July 1, 2004 (69 FR 40278).[15] After reconsideration, EPA published its final response on June 10, 2005 (70 FR 33838), which stated that the Agency would not change any aspects of the ERP. On March 17, 2006, the D.C. Circuit acted on the petitions for review and vacated the ERP Rule.[16] EPA removed the vacated language from the

[15] The reconsideration granted by EPA opened a new 60-day public comment period, including a new public hearing, on three issues of the ERP: (1) the basis for determining that the ERP was allowable under the CAA; (2) the basis for selecting the cost threshold (20 percent of the replacement cost of the process unit) that was used in the final rule to determine if a replacement was routine; and (3) a simplified procedure for incorporating a Federal Implementation Plan into state plans to accommodate changes to the NSR rules.

[16] *New York* v. *EPA,* 443 F.3d 880 (D.C. Cir. 2006).

Federal rules in a final rule published on July 19, 2021 (86 FR 37918).

Rule 2.0530 in the April 24, 2020, Mecklenburg submittal adopts the requirements of 40 CFR 51.166 as amended July 1, 2014, with exceptions. Likewise, Rule 2.0544 of the April 24, 2020, Mecklenburg submittal adopts the requirements of 40 CFR 51.166 as amended July 20, 2011, with exceptions. In this NPRM, EPA is not proposing to act on the incorporation by reference of language to implement the ERP, as provided in EPA's October 27, 2003, rule. *See* 68 FR 61248. Specifically, EPA is not acting on the incorporation by reference of the 2003 changes to 40 CFR 51.166(b)(2)(iii)(*a*), the incorporation by reference of 40 CFR 51.166(b)(53) through (56), nor the incorporation by reference of 40 CFR 51.166(y). These provisions were in the Federal rule as of July 1, 2014; but, previously vacated by the D.C. Circuit.[17] EPA subsequently removed the vacated provisions from the CFR. *See* 86 FR 37918 (July 19, 2021).

F. Ethanol Rule

Under the CAA, there are two possible thresholds for determining whether a source is a major emitting facility that is potentially subject to the construction permitting requirements under the PSD program; one threshold is 100 tons per year (tpy) per pollutant, and the other is 250 tpy per pollutant. Section 169(1) of the CAA lists twenty-eight source categories that qualify as major emitting facilities if their emissions equal or exceed the 100 tpy threshold. If the source does not fall within one of twenty-eight source categories listed in section 169, then the 250 tpy threshold is applicable.

One of the source categories in the list of twenty-eight source categories, to which the 100 tpy threshold applies, is chemical process plants. Since the Standard Industrial Classification (SIC) code for chemical process plants includes facilities primarily engaged in manufacturing ethanol fuel, EPA and states had previously considered such facilities to be subject to the 100 tpy thresholds.

As a result of this classification, pursuant to EPA's major NSR regulations, chemical process plants were also required to include fugitive emissions for determining the potential emissions of such sources. Thus, prior to promulgation of the 2007 Ethanol Rule, the classification of fuel and industrial ethanol facilities as chemical process plants had the effect of requiring these plants to include fugitive emissions when determining whether their emissions exceed the applicability thresholds for the PSD and NNSR permit programs.

On May 1, 2007, EPA published the 2007 Ethanol Rule (72 FR 24060), which amended EPA's PSD and NNSR regulations to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes from the ''chemical process plants'' category under the regulatory definition of ''major stationary source.'' This change to EPA's NSR regulations affected the threshold used to determine PSD applicability for these ethanol production facilities, clarifying that such facilities were subject to the 250 tpy major source threshold. The 2007 Ethanol Rule also included changes to other provisions which established that ethanol facilities need not count fugitive emissions when determining whether such a source is ''major'' under the Federal PSD, NNSR, and Title V permitting programs.

On July 2, 2007, the National Resources Defense Council (NRDC) petitioned the D.C. Circuit to review the 2007 Ethanol Rule. On that same day, EPA received a petition for administrative reconsideration and request for stay of the 2007 Ethanol Rule from NRDC. On March 27, 2008, EPA denied NRDC's 2007 administrative petition for reconsideration.

On March 2, 2009, EPA received a second petition for reconsideration and request for stay from NRDC. In 2009, NRDC also filed a petition for judicial review challenging EPA's March 27, 2008, denial of NRDC's 2007 administrative petition in the D.C. Circuit. This challenge was consolidated with NRDC's challenge to the 2007 Ethanol Rule. In August of 2009, the D.C. Circuit granted a joint motion to hold the case in abeyance, and the case has remained in abeyance.

On October 21, 2019, EPA partially granted and partially denied NRDC's 2009 administrative petition for reconsideration. *See* 84 FR 59743 (November 6, 2019). Specifically, EPA granted the request for reconsideration with regard to NRDC's claim that the 2007 Ethanol Rule did not appropriately address the CAA section 193 anti-backsliding requirements for nonattainment areas. EPA denied the remainder of the requests for reconsideration on the grounds that NRDC failed to establish that reconsideration was warranted under CAA section 307(d)(7)(B).

Mecklenburg County's incorporation by reference of Federal PSD provisions as of July 1, 2014, includes the 2007 Ethanol Rule's changes to the treatment of ethanol production facilities. See section III.F of this NPRM and EPA's technical support document in the docket for this proposed action for more details.

III. Analysis of Mecklenburg's April 24, 2020 Submittal

MCAQ adopts the Federal PSD requirements of 40 CFR 51.166 with several changes, consistent with the State of North Carolina's PSD provisions.[18] MCAPCO Rule 2.0530 adopts certain provisions of the version of 40 CFR 51.166 effective on July 1, 2014, with certain revisions described in this document, and Rule 2.0544 adopts certain provisions of the version of the Federal rule effective on July 20, 2011, with certain revisions described in this document. EPA's analysis of several features of the April 24, 2020, LIP revision related to Mecklenburg County's PSD program at Rules 2.0530 and 2.0544 is included in the following subsections.

A. 2002 NSR Reform Rules

This SIP revision addresses baseline actual emissions, actual-to-projected actual applicability tests, PALs, recordkeeping requirements, and reporting requirements.[19] Rule 2.0530 adopts the Federal PSD requirements at 40 CFR 51.166, as amended July 1, 2014, with certain revisions described in this document. These revisions include a non-substantive update to the definition of ''baseline actual emissions;'' an amendment pursuant to the PAL adjustment provision at 51.166(w)(10)(iv)(*a*); and streamlined language to adopt the recordkeeping and reporting requirements at 51.166(r)(6).

As a general matter, state and local agencies may meet the requirements of 40 CFR part 51 with different but equivalent (or more stringent) regulations. As mentioned above, MCAQ chose to adopt the Federal rules with several changes, consistent with North Carolina's SIP-approved PSD provisions. The definition of ''baseline actual emissions'' at Rule 2.0530(b)(1) was changed from the Federal provisions to remove the provision allowing emissions units that are not electric utility steam generating units (EUSGUs) to look back 10 years to select the baseline period. Mecklenburg

[17] *See* footnote 16.

[18] *See, e.g.,* 76 FR 49313 (August 10, 2011); 76 FR 64240 (October 18, 2011); 81 FR 63107 (September 14, 2016); 83 FR 45827 (September 11, 2018); 84 FR 38876 (August 8, 2019); and 85 FR 57707 (September 16, 2020).

[19] As noted in section II.A, EPA is not proposing to act on the incorporation by reference of EPA's indefinitely stayed fugitive emissions provisions at 40 CFR 51.166(b)(2)(v) and 51.166(b)(3)(iii)(*d*).

County rules treat EUSGUs and non-EUSGUs the same by allowing a look-back of only five years. However, Mecklenburg County rules provide the option of allowing a different time period, not to exceed 10 years, if the owner or operator demonstrates that it is more representative of normal source operation as required by 40 CFR 51.166(b)(47)(i). In addition, Mecklenburg County rules require EUSGUs to adjust downward the baseline emissions to account for reductions required under the North Carolina Clean Smokestacks Act, which is a North Carolina law that became effective in 2007 and set caps on NO_X and SO_2 emissions from public utilities operating coal-fired power plants in the State that cannot be met by purchasing emissions credits. *See* N.C. Gen. Stat. section 143–215.107D; N.C. Gen. Stat. section 62–133.6.

With regard to the PAL adjustment provision at 51.166(w)(10)(iv)(*a*), the Federal regulations provide the option that if the emissions level is equal to or greater than 80 percent of the PAL level, the reviewing authority may renew the PAL at the same level or it may set the PAL at a different level considering other factors per 40 CFR 51.166(w)(10)(iv)(*b*). Rule 2.0530(i) instead requires that the PAL be renewed at the same level if emissions are equal to or greater than 80 percent of the PAL.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping and EPA's December 21, 2007, clarifications of the term ''reasonable possibility'' (72 FR 72607), Mecklenburg County did not adopt all the provisions at 40 CFR 51.166(r)(6) or adopt the Federal ''reasonable possibility'' standard. Instead, Mecklenburg County adopted recordkeeping and reporting requirements at paragraph 2.0530(u) that apply to all modifications that use the actual-to-projected-actual applicability test. Therefore, the Mecklenburg County provisions meet the minimum recordkeeping and reporting requirements of the Federal rule.

In addition to incorporating the Federal rules by reference with several changes, Mecklenburg County's rule revisions include two additional provisions that do not directly relate to the 2002 NSR Reform rules, including: (1) incorporating by reference 40 CFR 52.21(r)(2) to clarify the period of validity of approval to construct; and (2) requiring that all new natural gas-fired EUSGUs install best available control technology or lowest achievable emission rate, as appropriate. This second requirement was included in the North Carolina rules originally for clarity and consistency with restrictions on use of allowances imposed by an agreement resulting from provisions of the North Carolina Clean Smokestacks Act, and Mecklenburg County adopted the same provision to be consistent with the State.[20]

EPA believes that approval of these changes would not have a negative impact on air quality in the Mecklenburg County area. With these proposed changes, the local regulations will now be consistent with the State's current SIP-approved PSD program, which already underwent updates concerning the 2002 NSR Reform Rules on August 10, 2011. *See* 76 FR 49313.

B. Fine Particulate Matter ($PM_{2.5}$) NAAQS

The April 24, 2020, submittal adopts the $PM_{2.5}$ provisions necessary to implement PSD for the $PM_{2.5}$ NAAQS. First, regarding the 2008 NSR $PM_{2.5}$ Rule, the incorporation by reference date of July 1, 2014, captures the requirement for PSD permits to address directly emitted $PM_{2.5}$ and precursor pollutants as codified at 40 CFR 51.166(b)(49). This incorporation by reference date also includes the PSD requirement that condensable PM_{10} and $PM_{2.5}$ emissions be accounted for in PSD applicability determinations and in establishing emissions limitations for permitting, as codified at section 51.166(b)(49) and corrected in EPA's October 25, 2012 $PM_{2.5}$ Condensable Correction Rule (77 FR 65107). The significant emission rates for direct $PM_{2.5}$ and its precursors of SO_2 and NO_X are adopted at Rule 2.0530(b)(4), which references 40 CFR 51.166(b)(23)(i), and which also notes that VOCs and ammonia are not significant precursors to $PM_{2.5}$ in attainment and unclassifiable areas where Rule 2.0530 would apply. This is consistent with Federal language on $PM_{2.5}$ precursor pollutants at 40 CFR 51.166(b)(23)(i) and 51.166(b)(49)(i)(*b*)(*4*).

Next, Rule 2.0530(e)'s adoption of the July 1, 2014, requirements of 40 CFR 51.166(c) include required elements of EPA's $PM_{2.5}$ PSD-Increments-SILs-SMC Rule. Specifically, adopting the Federal rule as of July 1, 2014, includes the $PM_{2.5}$ increments at 40 CFR 51.166(c)(1). Additionally, by adopting the definitions contained in 40 CFR 51.166(b) as of July 1, 2014, Rule 2.0530(b) has the effect of adding to the Mecklenburg County LIP the required definitions of ''major source baseline date,'' ''minor source baseline date,'' and ''baseline area.''

Finally, Rule 2.0530 does not include (1) the grandfathering provisions from the $PM_{2.5}$ NSR Rule, or (2) the $PM_{2.5}$ SILs and SMC provisions from the $PM_{2.5}$ Increments-SILs-SMC Rule, as the July 1, 2014, date captures EPA's May 18, 2011, and December 9, 2013, actions to remove these provisions, respectively. *See* 76 FR 28646 and 78 FR 73698. Therefore, EPA has preliminarily determined that Mecklenburg County's incorporation by reference of EPA's PSD regulations as of July 1, 2014, is consistent with current Federal provisions to implement $PM_{2.5}$ for PSD.

C. 1997 8-Hour Ozone NAAQS Phase 2 Rule

Mecklenburg County adopts the PSD provisions from the Ozone Phase 2 Rule, as noted in section II.C of this NPRM. Consistent with North Carolina's rules and the Federal rules, Rule 2.0530(b) adopts the same language regarding the Phase 2 Rule via the incorporation by reference of 40 CFR 51.166(b)(1)(ii), 51.166(b)(2)(ii), 51.166(b)(23)(i), and 51.166(b)(49)(i), which effectively recognizes VOCs and NOx as precursors to ozone for purposes of PSD. Therefore, EPA has preliminarily determined that MCAQ's proposed LIP revision is consistent with the Ozone Phase 2 Rule.

D. Greenhouse Gas Tailoring Rule and Biomass Deferral Rule

The April 24, 2020, SIP revision establishes thresholds for determining which new stationary sources and modification projects become subject to permitting requirements for GHG emissions under Mecklenburg County's PSD program. This SIP revision updates MCAQ's existing PSD program to include a new rule applicable to GHGs only. Specifically, the revision incorporates a new PSD rule into Mecklenburg County's LIP, at MCAPCO Rule 2.0544, *Prevention of Significant Deterioration Requirements for Greenhouse Gases,* to address the thresholds for GHG permitting applicability. This new regulation adopts the provisions of 40 CFR 51.166 as effective on July 26, 2011, to specifically include the Federal Tailoring Rule requirements still in place and defined at 40 CFR 51.166. For all other regulated NSR pollutants, the provisions of Rule 2.0530 apply.

[20] Any allowances for emissions reductions achieved under the North Carolina Clean Smokestacks Act are not available to the subject facilities for Federal Clean Air Act programs because they are ''state only'' reductions, and such reductions may not be used to offset emissions and avoid installation of BACT or LAER on new natural gas-fired units. *See generally https://deq.nc.gov/about/divisions/air-quality/air-quality-outreach/news/clean-air-legislation/clean-smokestacks-act* (last accessed March 23, 2022).

Additionally, Rule 2.0544(a) reflects the effects of the 2014 *UARG* decision on PSD permitting requirements for GHG-only, or Step 2, sources, by including the following language: ''A major stationary source or major modification shall not be required to obtain a prevention of significant deterioration (PSD) permit on the sole basis of its greenhouse gas emissions. For all other regulated NSR pollutants, the provisions of MCAPCO Regulation 2.0530 of this [sic] apply.''

The Rule also includes a mechanism at Rule 2.0554(d) to automatically incorporate any changes to the Federal GHG global warming potentials into the definition of ''subject to regulation'' incorporated by reference from 40 CFR 51.166(b)(48) that may occur after the incorporation by reference (''IBR'') date. In order to determine if a source is subject to regulation for GHGs, a source's total GHG emissions are calculated using the global warming potentials published in Table A–1 of Subpart A of 40 CFR part 98.[21] MCAQ's submittal ensures that any future changes EPA makes to Table A–1 are concurrently incorporated into the Mecklenburg County LIP-approved PSD program for greenhouse gases without the need for further LIP revisions.

The July 20, 2011, version of the definition of ''subject to regulation'' at 40 CFR 51.166(b)(48) includes the text of the Biomass Deferral Rule, discussed in section II.D of this NPRM, at 51.166(b)(48)(ii)(*a*). However, MCAQ submitted a letter on February 4, 2022, through NCDAQ, clarifying its intent for EPA not to adopt the since-vacated text of the Biomass Deferral Rule into the federally-approved LIP. The letter withdraws this portion of the adoption of PSD provisions in its submittal from EPA consideration.

In the February 4, 2022, supplemental letter, Mecklenburg County also clarifies that while Rule 2.0544's definition of ''baseline actual emissions'' does not include the term ''immediately'' at subparagraph 2.0544(b)(1), MCAQ will enforce the provision as if the term were present based on MCAQ's interpretation and North Carolina's interpretation that this word is extraneous. This rule previously included the term ''immediately'' in its locally effective version, as follows:

> For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Department for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Department, if the owner or operator demonstrates that it is more representative of normal source operation. . . .

Without the term ''immediately,'' this provision reads as follows:

> For an existing emissions unit, baseline actual emissions mean the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period preceding the date that a complete permit application is received by the Department for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years preceding the date that a complete permit application is received by the Department, if the owner or operator demonstrates that it is more representative of normal source operation. . . .

The term ''immediately'' was eliminated from the State's analogous rule at 15A North Carolina Administrative Code Rule 02D .0544 subparagraph (b)(1) as the result of a technical correction from the North Carolina Rules Review Commission to remove this word as extraneous text. North Carolina previously submitted a letter clarifying that the State intends to enforce its provision at 15A North Carolina Administrative Code Rule 02D .0544 subparagraph (b)(1) as if the term ''immediately'' were present in the rule. MCAQ's February 4, 2022, letter notes that MCAQ intends to be consistent with the State and therefore also intends to enforce subparagraph 2.0544(b)(1) as if the term ''immediately'' were present. EPA also notes that the definition of ''baseline actual emissions,'' as included in Rule 2.0530(b)(1) for other regulated NSR pollutants, includes the term ''immediately.'' Therefore, MCAQ would be enforcing 2.0544(b)(1) consistent with how the term is defined at 2.0530(b)(1). EPA's proposed action to incorporate the definition of ''baseline actual emissions'' is based on Mecklenburg County's interpretation of this subparagraph as explained in the February 4, 2022, letter.[22]

EPA has preliminarily determined that MCAQ's proposed LIP revision is consistent with the Tailoring Rule. Furthermore, EPA has preliminarily determined that this revision to Mecklenburg County's LIP is consistent with section 110 of the CAA. Therefore, EPA is proposing to incorporate Rule 2.0544 into the Mecklenburg County LIP, excluding the language of the Biomass Deferral Rule from the incorporation by reference of 40 CFR 51.166.[23]

E. Equipment Replacement Provision

As noted in section II.E of this NPRM, the April 24, 2020, submittal adopts the Federal PSD plan requirements contained within 40 CFR 51.166 as amended July 1, 2014, with certain revisions, into Rule 2.0530, *Prevention of Significant Deterioration.* The language of the ERP was vacated by court order before July 1, 2014, and therefore, as noted in section II.E of this NPRM, EPA is not proposing to act on the incorporation by reference of the 2003 changes to 40 CFR 51.166(b)(2)(iii)(*a*), the incorporation by reference of paragraphs 40 CFR 51.166(b)(53) through (56), nor the incorporation by reference of 40 CFR 51.166(y) in Rule 2.0530 or Rule 2.0544.

F. Ethanol Rule

MCAPCO Rule 2.0530 is consistent with EPA's PSD program requirements in 40 CFR 51.166, as amended in the 2007 Ethanol Rule.[24] EPA prepared a Technical Support Document (TSD) related to the 2007 Ethanol Rule adoption that is available as part of the docket to this proposed rulemaking that contains an analysis of the potential impact of the SIP revision on air quality and whether approval of the SIP revision will interfere with attainment

[21] GHGs, as defined in the definition of ''subject to regulation'' at 40 CFR 51.166(b)(48), is the aggregate of six different gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. To calculate the total GHG emissions for a source: (1) the mass amount of emissions, in tpy, of each individual GHG is multiplied by its global warming potential found in Table A–1 of Subpart A of 40 CFR part 98, and (2) the resulting values for each individual GHG are added. This results in the total GHG emissions for the source expressed in tpy of CO_2 equivalent (tpy CO_2e).

[22] EPA incorporated this language into the SIP on August 8, 2019 (84 FR 38876).

[23] If EPA finalizes this proposed action, it will include a note in the table in paragraph (c)(3) of 40 CFR 52.1770 identifying the exclusion of the Biomass Deferral Rule language from the LIP-approved version of Rule 2.0544.

[24] The term ''major stationary source'' is defined in 40 CFR 51.166(b)(1)(i)(a) as ''[a]ny of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: . . . Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).'' Additionally, 40 CFR 51.166(b)(1)(iii) excludes fugitive emissions from ethanol production facilities from the ''chemical process plants'' category such that fugitive emissions are not considered in determining whether the facility is subject to PSD. Because Mecklenburg County's incorporation by reference of 40 CFR 51.166 includes the ethanol exclusion, ethanol facilities emitting less than 250 tpy of a regulated air pollutant are not subject to PSD, and fugitive emissions from ethanol facilities are not considered in determining whether the facility is subject to PSD.

or maintenance of the national ambient air quality standards (or standards) or any other CAA requirement. As discussed therein, there are no existing ethanol plants in Mecklenburg County. The one existing ethanol plant in the State is mapped in the TSD along with the ambient air monitors to demonstrate the relationship between ethanol production and air quality.

Emissions for four criteria pollutants are analyzed in the TSD. EPA also graphed air quality trends in the TSD in Mecklenburg County, since the date of promulgation of the 2007 Ethanol Rule, until 2021, for all criteria pollutants associated with ethanol production. The air quality trends reveal air quality improved for generally every pollutant monitored. Additionally, there has been no ethanol production in or near Mecklenburg County, North Carolina.

EPA also describes requirements for MCAQ's minor source NSR program in the TSD because the facilities that would be below the 250 tpy PSD major source threshold under this rulemaking will still need to obtain minor source construction permits. EPA further analyzes the impact of increasing the threshold to 250 tpy on ozone and PM precursors. As the analysis for ozone and secondary PM in the TSD demonstrates that sources below the 250 tpy threshold will not cause any interference with attainment or maintenance of the standard in Mecklenburg County.

Based on EPA's analysis in the TSD, EPA's exclusion of these facilities from MCAQ's PSD program, as proposed herein, would not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the CAA) or any other applicable requirement of the CAA. Therefore, this proposed action is consistent with CAA section 110(l).

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the following Mecklenburg County Rules: 2.0530, *Prevention of Significant Deterioration,* effective October 17, 2017;[25] and 2.0544, *Prevention of Significant Deterioration Requirements for Greenhouse Gases,* effective December 15, 2015.[26] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section in the preamble of this document for more information).

V. Proposed Action

EPA is proposing to approve the aforementioned changes to the Mecklenburg County LIP. Specifically, EPA is proposing to incorporate updates to PSD permitting provisions in Rule 2.0530, *Prevention of Significant Deterioration,* and incorporate new Rule 2.0544, *Prevention of Significant Deterioration Requirements for Greenhouse Gases,* with the exception of those provisions described in footnotes 25 and 26 of this document. EPA believes that approval of these changes and additions, including all amendments mentioned in the preceding sections, would not have a negative impact on air quality in the Mecklenburg County area. With these proposed changes and additions, the local regulations will now be consistent with the State's current SIP-approved PSD program and Federal PSD rules. Additionally, these updates include important provisions such as recognizing NO_X as a precursor to ozone, incorporating provisions to regulate $PM_{2.5}$, and incorporating provisions to regulate GHGs for the purposes of PSD. Therefore, EPA is proposing to approve the April 24, 2020, LIP revision changes to Mecklenburg County's PSD permitting program, pursuant to the Act and EPA's implementing 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. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve local law as meeting Federal requirements and does not impose additional requirements beyond those imposed by local 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

[25] EPA is not proposing to incorporate by reference the provisions of the Equipment Replacement Rule and Fugitive Emissions Rule contained in 40 CFR 51.166(b)(2)(iii)(a), 40 CFR 51.166(b)(2)(v), 51.166(b)(3)(iii)(d), 40 CFR 51.166(b)(53) through (56), and 40 CFR 51.166(y) as those CFR provisions existed on July 1, 2014.

[26] EPA is not proposing to incorporate by reference the provisions of the Biomass Deferral Rule contained in 40 CFR 51.166.(b)(48)(ii)(a) as that CFR provision existed on July 20, 2011.

Dated: August 18, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–18172 Filed 8–23–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220818–0171]

RIN 0648–BI18

Fisheries of the Northeastern United States; Amendment 20 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 20 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan. The Mid-Atlantic Fishery Management Council developed this action to limit the amount of surfclam or ocean quahog individual transferable quota share or annual allocation in the form of cage tags that an individual or their family members could hold. These changes are intended to ensure the management plan is consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act, and to improve the management of these fisheries.

DATES: Comments must be received by September 23, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0112, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2020–0112 in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Surfclam/Ocean Quahog Excessive Shares Amendment.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Greater Atlantic Regional Fisheries Office and to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Copies of Amendment 20, including the draft Environmental Assessment (EA), are available on request from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. These documents are also accessible via the internet at *https://www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978–281–9341.

SUPPLEMENTARY INFORMATION:

Background

This action proposes regulations to implement Amendment 20, also known as the Excessive Shares Amendment, to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP). The Mid-Atlantic Fishery Management Council developed this amendment to establish limits to the amount of individual transferable quota (ITQ) quota share or cage tags such that any particular individual, corporation, or other entity can not acquire an excessive share of such privileges, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to make administrative changes to improve the efficiency of the FMP.

The Magnuson-Stevens Act requires that any FMP or implementing regulation be consistent with ten national standards for fishery conservation and management. National Standard 4 stipulates that, ''If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be . . . carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.'' When the Council adopted Amendment 8 to the Atlantic Surfclam and Ocean Quahog FMP, which created the individual transferable quota (ITQ) system for managing the fishery, it relied on Federal antitrust laws to prevent entities from acquiring excessive shares. In 2002, the Government Accountability Office (GAO) released a report titled, *Better Information Could Improve Program Management* (GAO–03–159, December 11, 2002). One of the recommendations from that report was for the Council to define what constitutes an excessive share for this fishery. By 2007, the Council had begun development of an FMP amendment to address this recommendation as well as implement a cost recovery program and accountability measure requirements that were introduced by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Pub. L. 109–479). The accountability measure provisions were subsequently removed and were implemented as part of the Council's Annual Catch Limit and Accountability Measure Omnibus Amendment (76 FR 60605, September 29, 2011).

As part of the development of this action, an economic consulting company, Compass Lexecon, was contracted to evaluate the fishery and to provide advice on how to set an excessive share limit on ITQ systems that could protect against market power without constraining the workings of competition. The 2011 Compass Lexecon report and associated Center for Independent Experts review indicated that, in order to implement an excessive shares definition, managers would need more reliable information regarding quota share ownership, and would need to better monitor control of the quota by tracking transfers and long-term leases of cage tags in the surfclam and ocean quahog fisheries.

In 2012, the Council voted to split the FMP amendment that was under development. The cost recovery provisions became Amendment 17 (81 FR 38969, June 15, 2016). The Council requested that NMFS create a data collection program as authorized under Section 402A of the Magnuson-Stevens Act, and the Council subsequently established a new fishery management action team (FMAT) to develop recommendations for the program. The new program became effective on January 1, 2016 (80 FR 42747, July 20, 2015), and collected more detailed