

Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: December 20, 2010.

Gwendolyn Keyes Fleming,
Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Z—Mississippi

■ 2. In § 52.1270(c) the table is amended by revising the following entry for “APC-S-5” to read as follows:

§ 52.1270 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED MISSISSIPPI REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
*	APC-S-5 Regulations for the Prevention of Significant Deterioration of Air Quality			*
All	12/1/2010	12/29/2010	APC-S-5 incorporates by reference the regulations found at 40 CFR 52.21 as of September 13, 2010. This EPA action is approving the incorporation by reference with the exception of the phrase “except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140,” APC-S-5 incorporated by reference from 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t) APC-S-5. In addition, this EPA action is not incorporating by reference, into the Mississippi SIP, the administrative regulations that were amended in the Fugitive Emissions Rule (73 FR 77882) and are stayed through October 3, 2011.
			[Insert citation of publication].	

* * * * *
[FR Doc. 2010-32667 Filed 12-28-10; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2010-0697-201072; FRL-9244-5]

Approval and Promulgation of Implementation Plans; Alabama: Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the State Implementation Plan (SIP), submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), to EPA on August 17, 2010, for parallel processing. ADEM submitted the final version of this SIP revision on December 14, 2010. The SIP revision incorporates updates to ADEM’s air quality regulations impacting the regulation of greenhouse gas (GHG) under Alabama’s New Source Review (NSR) Prevention of Significant Deterioration (PSD) program.

Specifically, the SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Alabama’s PSD permitting requirements for their GHG emissions. The change is necessary because without it, on January 2, 2011, PSD requirements would apply at the 100 or 250 tons per year (tpy) levels otherwise provided under the Clean Air Act (CAA or Act), which would overwhelm Alabama’s permitting resources. EPA is approving Alabama’s December 14, 2010, SIP revision because the Agency has made the determination that this SIP revision is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHGs. Additionally, EPA is responding to adverse comments received on EPA’s November 5, 2010, proposed approval of Alabama’s August 17, 2010, draft SIP revision.

DATES: *Effective Date:* This rule will be effective January 18, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2010-0697. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential

Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Alabama SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Ms. Bradley’s telephone number is (404) 562-9352; e-mail address: bradley.twunjala@epa.gov. For

information regarding the Tailoring Rule, contact Ms. Heather Abrams, Air Permits Section, at the same address above. Ms. Abrams' telephone number is (404) 562-9185; *e-mail address*: abrams.heather@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What is the background for today's final action?
- II. What is EPA's response to comments received on this action?
- III. What is the effect of today's final action?
- IV. When is today's action effective?
- V. Final Action
- VI. Statutory and Executive Order Reviews

I. What is the background for today's final action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action on the Alabama SIP.¹ Four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,² the "Johnson Memo Reconsideration,"³ the "Light-Duty Vehicle Rule,"⁴ and the "Tailoring Rule."⁵ Taken together, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they take effect on January 2, 2011, will subject GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis.

On August 17, 2010, in response to the Tailoring Rule and earlier GHG-related EPA rules, ADEM submitted a

draft revision to EPA for approval into the Alabama SIP to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Alabama's PSD permitting requirements for GHG emissions. Subsequently, on November 5, 2010, EPA published a proposed rulemaking to approve Alabama's August 17, 2010, SIP revision under parallel processing. 75 FR 68285. Specifically, Alabama's August 17, 2010, draft SIP revision includes changes to ADEM's Air Quality Regulations, 335-3-14-.04, *Air Permits Authorizing Construction in Clean Air Areas—Prevention of Significant Deterioration Permitting (PSD)*. The changes to ADEM's Rule 335-3-14-.04 *Air Permits Authorizing Construction in Clean Air Areas—Prevention of Significant Deterioration Permitting (PSD)* address the thresholds for GHG permitting applicability. Detailed background information and EPA's rationale for the proposed approval are provided in EPA's November 5, 2010, **Federal Register** notice.

EPA's November 5, 2010, proposed approval was contingent upon Alabama providing a final SIP revision that was substantively the same as the revision proposed for approval by EPA in the November 5, 2010, proposed rulemaking. 75 FR 68285. Alabama provided its final SIP revision on December 14, 2010. There were no changes between Alabama's August 17, 2010, draft SIP revision and the final SIP revision which was provided on December 14, 2010.

II. What is EPA's response to comments received on this action?

EPA received two sets of comments on the November 5, 2010, proposed rulemaking to approve revisions to Alabama's SIP. One set of comments, provided by the Sierra Club, was in favor of EPA's November 5, 2010, proposed action. The other set of comments, provided by the Air Permitting Forum, raised concerns with final action on EPA's November 5, 2010, proposed action. A full set of the comments provided by both the Sierra Club and Air Permitting Forum (hereinafter referred to as "the Commenter") is provided in the docket for today's final action. A summary of the adverse comments and EPA's responses are provided below.

Generally, the adverse comments fall into four categories. First, the Commenter asserts that PSD requirements cannot be triggered by GHGs. Second, the Commenter expresses concerns regarding a footnote in the November 5, 2010, proposal

describing EPA's previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds will not be obligated under federal law to obtain PSD permits prior to a SIP revision incorporating those thresholds. The Commenter explains that the planned SIP approval narrowing action "is illegal." Third, the Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Lastly, the Commenter states: "EPA should explicitly state in any final rule that the continued enforceability of these provisions in the Alabama SIP is limited to the extent to which the federal requirements remain enforceable." EPA's response to these four categories of comments is provided below.

Comment 1: The Commenter asserts that PSD requirements cannot be triggered by GHGs. In its letter, the Commenter reiterates EPA's statement that without the Tailoring Rule thresholds, PSD will apply as of January 2, 2011, to all stationary sources that emit or have the potential to emit, depending on the source category, either 100 or 250 tons of GHG per year. The Commenter also reiterates EPA's statement that beginning January 2, 2011, a source owner proposing to construct any new major source that emits at or higher than the GHG applicability levels, or modify any existing major source in a way that would increase GHG emissions, would need to obtain a PSD permit that addresses these emissions before construction could begin. In raising concerns with the two aforementioned statements, the Commenter states: "No area in the State of Alabama has been designated attainment or unclassifiable for greenhouse gases (GHGs), as there is no national ambient air quality standard (NAAQS) for GHGs. Therefore, GHGs cannot trigger PSD permitting." The Commenter notes that it made this argument in detail in comments submitted to EPA on the Tailoring Rule and other related GHG rulemakings. The Commenter attached those previously submitted comments to its comments on the proposed rulemaking related to this action. Finally, the Commenter states that "EPA should immediately provide notice that it is now interpreting the Act not to require that GHGs trigger PSD and allow Alabama to rescind that portion of its rules that would allow GHGs to trigger PSD."

Response 1: EPA established the requirement that PSD applies to all pollutants newly subject to regulation, including non-NAAQS pollutants, in

¹ On December 13, 2010, EPA finalized a "SIP Call" that would require those states with SIPs that do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. 75 FR 77698. In a companion rulemaking, EPA proposed a federal implementation plan (FIP) that would apply in any state that is unable to submit the required SIP revision by its deadline. 75 FR 53883 (September 2, 2010). Because Alabama's SIP already authorizes Alabama to regulate GHGs once GHGs become subject to PSD requirements on January 2, 2011, Alabama is not subject to the proposed SIP Call or FIP.

² "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

³ "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

⁴ "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

⁵ "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

earlier national rulemakings concerning the PSD program, and EPA has not reopened that issue in this rulemaking. In an August 7, 1980, rulemaking at 45 FR 52676, 45 FR 52710–52712, and 45 FR 52735, EPA stated that a “major stationary source” was one which emitted “any air pollutant subject to regulation under the Act” at or above the specified numerical thresholds; and defined a “major modification,” in general, as a physical or operational change that increased emissions of “any pollutant subject to regulation under the Act” by more than an amount that EPA variously termed as de minimis or significant. In addition, in EPA’s NSR Reform rule at 67 FR 80186 and 67 FR 80240 (December 31, 2002), EPA added to the PSD regulations the new definition of “regulated NSR pollutant” (currently codified at 40 CFR 52.21(b)(50) and 40 CFR 51.166(a)(49)); noted that EPA added this term based on a request from a commenter to “clarify which pollutants are covered under the PSD program;” and explained that in addition to criteria pollutants for which a NAAQS has been established, “[t]he PSD program applies automatically to newly regulated NSR pollutants, which would include final promulgation of an NSPS [new source performance standard] applicable to a previously unregulated pollutant.” *Id.* at 67 FR 80240 and 67 FR 80264. Among other things, the definition of “regulated NSR pollutant” includes “[a]ny pollutant that otherwise is subject to regulation under the Act.” See 40 CFR 52.21(b)(50)(d)(iv); see also *id.* 40 CFR 51.166(a)(49)(iv).

In any event, EPA disagrees with the Commenter’s underlying premise that PSD requirements are not triggered for GHGs when GHGs become subject to regulation as of January 2, 2011. As just noted, this has been well established and discussed in connection with prior EPA actions, including, most recently, the Johnson Reconsideration and the Tailoring Rule. In addition, EPA’s November 5, 2010, proposed rulemaking notice provides the general basis for the Agency’s rationale that GHG (while not a NAAQS pollutant) can trigger PSD permitting requirements. The November 5, 2010, notice also refers the reader to the preamble to the Tailoring Rule for further information on this rationale. In that rulemaking, EPA addressed at length the comment that PSD can be triggered only by pollutants subject to the NAAQS, and concluded such an interpretation of the Act would contravene Congress’ unambiguous intent. See 75 FR 31560–31562. Further discussion of EPA’s rationale for

concluding that PSD requirements are triggered by non-NAAQS pollutants such as GHGs appears in the Tailoring Rule Response-to-Comments document (“Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA’s Response to Public Comments”), pp. 34–41; and in EPA’s response to motions for a stay filed in the litigation concerning those rules (“EPA’s Response to Motions for Stay,” *Coalition for Responsible Regulation v. EPA*, DC Cir. No. 09–1322 (and consolidated cases)), at pp. 47–59, and are incorporated by reference here. These documents have been placed in the docket for today’s action.

Comment 2: The Commenter expresses concerns regarding a footnote in which EPA describes its previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule’s thresholds will not be obligated under federal law to obtain PSD permits during any gap between when GHG permitting requirements go into effect and when the SIP is revised to incorporate the Tailoring Rule thresholds. The Commenter explains that narrowing “is illegal.” Further, the Commenter states that “EPA has *not* proposed to narrow Alabama’s SIP approval here and any such proposal must be explicit and address the action specifically made with respect to Alabama. EPA cannot sidestep these important procedural requirements.”

Response 2: While EPA does not agree with the Commenter’s assertion that the narrowing approach discussed in EPA’s Tailoring Rule is illegal, the narrowing approach was not the subject of EPA’s November 5, 2010, proposed rulemaking to approve Alabama’s August 17, 2010, draft SIP revision. Rather the narrowing approach was the subject of a separate rulemaking, and any action to use this approach for Alabama’s SIP will be considered and finalized in an action separate from today’s rulemaking. In today’s final action, EPA is taking action to approve a SIP revision submitted by Alabama, and is not otherwise narrowing its approval of prior submitted and approved provisions in the Alabama SIP. Accordingly, the legality of the narrowing approach is not at issue in this rulemaking.

Comment 3: The Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Specifically, the Commenter refers to the statutory and executive orders for the Paperwork Reduction Act, the Regulatory Flexibility Act (RFA), Unfunded Mandates Reform Act, and Executive Order 13132 (Federalism). Additionally,

the Commenter mentions that EPA has never analyzed the costs and benefits associated with triggering PSD for stationary sources in Alabama, much less nationwide.

Response 3: EPA disagrees with the Commenter’s statement that EPA has failed to meet applicable statutory and executive order review requirements. As stated in EPA’s proposed approval of Alabama’s August 17, 2010, SIP revision, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. Accordingly, EPA approval, in-and-of-itself, does not impose any new information collection burden, as defined in 5 CFR 1320.3(b) and (c), that would require additional review under the Paperwork Reduction Act. In addition, this SIP approval will not have a significant economic impact on a substantial number of small entities, beyond that which would be required by the state law requirements, so a regulatory flexibility analysis is not required under the RFA. Accordingly, this rule is appropriately certified under section 605(b) of the RFA. Moreover, as this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandates or significantly or uniquely affect small governments, such that it would be subject to the Unfunded Mandates Reform Act. Finally, this action does not have federalism implications that would make Executive Order 13132 applicable because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

In sum, today’s rule is a routine approval of a SIP revision, approving state law, and does not impose any requirements beyond those imposed by state law. To the extent these comments are directed more generally to the application of the statutory and executive order reviews to the required regulation of GHGs under PSD programs, these comments are irrelevant to the approval of state law in today’s action. However, EPA provided an extensive response to similar comments in promulgating the Tailoring Rule. EPA refers the Commenter to the sections in the Tailoring Rule entitled “VII. *Comments on Statutory and Executive Order Reviews*,” 75 FR 31601–31603, and “VI. *What are the economic impacts of the final rule?*,” 75 FR 31595–31601. EPA also notes that today’s action does not in-and-of itself trigger the regulation

of GHGs. To the contrary, by putting in place higher PSD applicability thresholds for GHGs than would otherwise be in effect under the Act, this rulemaking, as well as EPA's Tailoring Rule, provides relief to smaller GHG-emitting sources that would otherwise be subject to PSD permitting requirements for their GHG emissions.

Comment 4: The Commenter states that "[i]f EPA proceeds with this action, it must condition approval on the continued validity of its determination that PSD can be triggered by or is applicable to GHGs." Further, the Commenter remarks on the ongoing litigation in the U.S. Court of Appeals for the D.C. Circuit. Specifically, regarding EPA's determination that PSD can be triggered by GHGs or is applicable to GHGs, the Commenter mentions that "EPA should explicitly state in any final rule that continued enforceability of these provisions in the Alabama SIP is limited to the extent to which the federal requirements remain enforceable." The Commenter notes that if a stay is issued, these requirements should also be stayed. Additionally, the Commenter notes the following statement in Alabama's proposed rulemaking: "It is the opinion of ADEM that the PSD program is not the appropriate vehicle for regulating GHG emissions. ADEM is taking this action to insure continuance of primacy of permitting authority for the State of Alabama and to alleviate some of the "absurd results" of EPA's previous GHG regulatory actions. If future Congressional or judicial action results in GHGs not being regulated under the PSD program, ADEM intends to undertake a rulemaking action to delete the PSD permitting thresholds for GHGs from its regulations."

Response 4: EPA believes that it is most appropriate to take actions that are consistent with the Federal regulations that are in place at the time the action is being taken. To the extent that any changes to Federal regulations related to today's action result from pending legal challenges or other actions, EPA will process appropriate SIP revisions in accordance with the procedures provided in the Act and EPA's regulations. It appears that ADEM acknowledges, by their statement that they "intend to undertake a rulemaking action to delete the PSD permitting thresholds for GHGs from its regulations," that a future SIP revision may be necessary. EPA notes that in an order dated December 10, 2010, the United States Court of Appeals for the D.C. Circuit denied motions to stay EPA's regulatory actions related to GHGs. *Coalition for Responsible*

Regulation, Inc. v. EPA, Nos. 09–1322, 10–1073, 10–1092 (and consolidated cases), Slip Op. at 3 (DC Cir. December 10, 2010) (order denying stay motions).

III. What is the effect of today's final action?

Final approval of Alabama's December 14, 2010, SIP revision will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule (75 FR 31514, June 3, 2010), ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements when these requirements begin applying to GHGs on January 2, 2011. Pursuant to section 110 of the CAA, EPA is approving the changes made in Alabama's December 14, 2010, final SIP revision into Alabama's SIP.

The changes to Alabama's SIP-approved PSD program that EPA is approving today are to Alabama's rules which have been formatted to conform to Alabama's SIP-approved PSD regulations 335–3–14–.04, *Air Permits Authorizing Construction in Clean Air Areas—Prevention of Significant Deterioration Permitting (PSD)*, but in substantive content the rules that address the Tailoring Rule provisions are the same as the federal rules. EPA performed a line-by-line review of the proposed change to Alabama's SIP-approved PSD regulations 335–3–14–.04, *Air Permits Authorizing Construction in Clean Air Areas—Prevention of Significant Deterioration Permitting (PSD)* and has determined that the proposed change is consistent with (and substantively the same as) the change to the federal provisions made by EPA's Tailoring Rule. Furthermore, EPA has determined that the December 14, 2010, revision to Alabama's SIP is consistent with section 110 of the CAA. See, e.g., Tailoring Rule, at 75 FR 31561.

IV. When is today's action effective?

EPA is making the effective date of today's final action the same day as Alabama's effective date for its rulemaking. In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective on January 18, 2011. This is because a delayed effective date is unnecessary due to the nature of Alabama's changes to its PSD regulations to establish appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting sources in accordance with EPA's Tailoring Rule, thereby relieving the State from certain CAA requirements that would otherwise apply to it. The January 18, 2011,

effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the sources within Alabama from considering the lower emissions thresholds for GHG permitting purposes. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective January 18, 2011.

V. Final Action

EPA is taking final action to approve Alabama's December 14, 2010, SIP revision which includes to Alabama's air quality regulation 335–3–14–.04, *Air Permits Authorizing Construction in Clean Air Areas—Prevention of Significant Deterioration Permitting (PSD)*. Specifically, Alabama's December 14, 2010, SIP revision establishes appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the determination that the December 14, 2010, SIP revision is approvable because it is in accordance with the CAA and EPA regulations including regulations pertaining to PSD permitting for GHGs.

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 action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office

of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

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

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

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

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

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using

practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2011. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse gases, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: December 20, 2010.

Gwendolyn Keyes Fleming,
Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart B—Alabama

■ 2. In § 52.50 (c) the table is amended by revising the following entry for “335-3-14-.04” to read as follows:

§ 52.50 Identification of plan.

* * * * *
(c) * * *

EPA APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * * *	Chapter No. 335-3-14 Air Permits	*	*	*
Section 335-3-14-.04	Air Permits Authorizing Construction in Clean Air Areas [;prevention of Significant Deterioration (PSD)].	1/18/2011	12/29/2010	[Insert citation of publication].
* * * * *		*	*	*

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R04-OAR-2010-0691-201069, FRL-9244-6]

Approval and Promulgation of Implementation Plans; Kentucky: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is taking final action to approve a revision to the State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky's Energy and Environment Cabinet, through the Kentucky Division for Air Quality (KDAQ), to EPA on August 5, 2010, for parallel processing. KDAQ submitted the final version of this SIP revision on December 13, 2010. The SIP revision, which incorporates updates to KDAQ's air quality regulations, includes two significant changes impacting the regulation of greenhouse gas (GHG) under Kentucky's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. First, the revision provides the Commonwealth with authority to issue PSD permits governing GHGs. Second, the SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Kentucky's PSD permitting requirements for their GHG emissions. The first change is necessary because the Commonwealth of Kentucky is required to apply its PSD program to GHG-emitting sources, and unless it does so (or unless EPA promulgates a Federal implementation plan (FIP) to do so), such sources will be unable to receive preconstruction permits and therefore may not be able to construct or modify. The second change is necessary because without it, on January 2, 2011, PSD requirements would apply at the 100 or 250 tons per year (tpy) levels otherwise provided under the Clean Air Act (CAA or Act), which would overwhelm Kentucky's permitting resources. EPA is approving the Commonwealth of Kentucky's December 13, 2010, SIP revision because the Agency has made the determination that this SIP revision is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHGs. Additionally, EPA is responding to adverse comments

received on EPA's November 5, 2010, proposed approval of Kentucky's August 5, 2010, SIP revision.

DATES: *Effective Date:* This rule will be effective January 3, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2010-0691. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. 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 information regarding the Kentucky SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Ms. Bradley's telephone number is (404) 562-9352; e-mail address: bradley.twunjala@epa.gov. For information regarding the Tailoring Rule, contact Ms. Heather Abrams, Air Permits Section, at the same address above. Ms. Abrams' telephone number is (404) 562-9185; e-mail address: abrams.heather@epa.gov.

SUPPLEMENTARY INFORMATION:**Table of Contents**

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- VI. Statutory and Executive Order Reviews

I. What is the background for today's final action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action for the Kentucky SIP. The first four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,¹ the "Johnson Memo Reconsideration,"² the "Light-Duty Vehicle Rule,"³ and the "Tailoring Rule."⁴ Taken together, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they take effect on January 2, 2011, will subject GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. In a separate action, EPA called on the Commonwealth of Kentucky and 12 other States with SIPs that do not provide authority to issue PSD permits governing GHGs to revise their SIPs to provide such authority (the "GHG PSD SIP Call").⁵ EPA established a deadline of March 31, 2011, for Kentucky (including the entire State, except for the Louisville Metro Air Pollution Control District) to submit its GHG PSD SIP. Finally, in the most recent action, EPA proposed to implement a FIP authorizing PSD permitting for GHGs for those States that are unable to revise their SIPs to provide that authority by the applicable deadline (the "GHG PSD FIP").⁶ By a notice signed December 23, 2010, EPA finalized the FIP for seven States:

¹ "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

² "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

³ "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

⁴ "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

⁵ "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call: Final Rule." 75 FR 77698 (December 13, 2010).

⁶ "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan: Proposed Rule." 75 FR 53883 (September 2, 2010).