

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zones by the San Diego Harbor Police.

Dated: December 20, 2010.

**P.J. Hill,**

*Commander, U.S. Coast Guard, Acting Captain of the Port San Diego, CA.*

[FR Doc. 2010-32914 Filed 12-28-10; 11:15 am]

**BILLING CODE 9110-04-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-HQ-OAR-2010-0107; FRL-9245-3]

RIN 2060-AQ45

**Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is establishing a federal implementation plan (FIP) to apply in each of seven states that have not submitted by their established deadline

a corrective state implementation plan (SIP) revision to apply their Clean Air Act (CAA or Act) Prevention of Significant Deterioration (PSD) program to sources of greenhouse gases (GHGs). This action will ensure that a permitting authority—EPA—is available in these states as of January 2, 2011, when PSD becomes applicable to GHG-emitting sources, to issue preconstruction PSD permits and thereby facilitate construction or expansion. The seven states are: Arizona: Both Pinal County and Rest of State (excluding Maricopa County, Pima County, and Indian Country), Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming. This action is related to EPA’s recently promulgated final rule, published on December 13, 2010, which we call the GHG PSD SIP call, and in which EPA made a finding of substantial inadequacy and issued a SIP call for these seven states and several others on grounds that their SIPs do not apply the PSD program to GHG-emitting sources.

**DATES:** This action is effective on December 30, 2010.

**ADDRESSES:** EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2010-0107. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some

information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cheryl Vetter, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541-4391; *fax number:* (919) 541-5509; *e-mail address:* [vetter.cheryl@epa.gov](mailto:vetter.cheryl@epa.gov).

For information related to a specific state, local, or tribal permitting authority, please contact the appropriate EPA regional office:

EPA regional office	Contact for regional office (person, mailing address, telephone number)	Permitting authority
I .....	Dave Conroy, Chief, Air Programs Branch, EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109-3912, (617) 918-1661.	Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont
II .....	Raymond Werner, Chief, Air Programs Branch, EPA Region 2, 290 Broadway, 25th Floor, New York, NY 10007-1866, (212) 637-3706.	New Jersey, New York, Puerto Rico, and Virgin Islands.
III .....	Kathleen Cox, Chief, Permits and Technical Assessment Branch, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-2173.	District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, and West Virginia.
IV .....	Lynorae Benjamin, Chief, Regulatory Development Section, Air, Pesticides and Toxics Management Division, EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303-3104, (404) 562-9033.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
V .....	J. Elmer Bortzer, Chief, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604-3507, (312) 886-1430.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
VI .....	Jeff Robinson, Chief, Air Permits Section, EPA Region 6, Fountain Place 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 665-6435.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
VII .....	Mark Smith, Chief, Air Permitting and Compliance Branch, EPA Region 7, 901 North 5th Street, Kansas City, KS 66101, (913) 551-7876.	Iowa, Kansas, Missouri, and Nebraska.
VIII .....	Carl Daly, Unit Leader, Air Permitting, Monitoring & Modeling Unit, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129, (303) 312-6416.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
IX .....	Gerardo Rios, Chief, Permits Office, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3974.	Arizona, California, Hawaii and the Pacific Islands, Indian Country within Region 9 and Navajo Nation, and Nevada.
X .....	Nancy Helm, Manager, Federal and Delegated Air Programs Unit, EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101, (206) 553-6908.	Alaska, Idaho, Oregon, and Washington.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

Entities affected by this rule include the seven state and local permitting authorities<sup>1</sup> identified by EPA to have not submitted by their deadline a SIP revision that would apply PSD requirements to GHG-emitting sources. In the GHG PSD SIP call,<sup>2</sup> EPA

determined that these seven states have SIPs that are substantially inadequate to achieve CAA requirements because their PSD programs do not apply to GHG-emitting sources, and EPA established that deadline.

Entities potentially affected by this rule also include sources in all industry groups, which have a direct obligation under the CAA to obtain a PSD permit for GHGs for projects that meet the applicability thresholds set forth in the

Tailoring Rule.<sup>3</sup> This independent obligation on sources is specific to PSD and derives from CAA section 165(a). Any source that is subject to a state PSD air permitting regulation not structured to apply to GHG-emitting sources will rely on this rule to obtain a permit that contains emission limitations that conform to requirements under CAA section 165(a). The majority of entities potentially affected by this action are expected to be in the following groups:

Industry group	NAICS <sup>a</sup>
Utilities (electric, natural gas, other systems) .....	2211, 2212, 2213.
Manufacturing (food, beverages, tobacco, textiles, leather) .....	311, 312, 313, 314, 315, 316.
Wood product, paper manufacturing .....	321, 322.
Petroleum and coal products manufacturing .....	32411, 32412, 32419.
Chemical manufacturing .....	3251, 3252, 3253, 3254, 3255, 3256, 3259.
Rubber product manufacturing .....	3261, 3262.
Miscellaneous chemical products .....	32552, 32592, 32591, 325182, 32551.
Nonmetallic mineral product manufacturing .....	3271, 3272, 3273, 3274, 3279.
Primary and fabricated metal manufacturing .....	3311, 3312, 3313, 3314, 3315, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329.
Machinery manufacturing .....	3331, 3332, 3333, 3334, 3335, 3336, 3339.
Computer and electronic products manufacturing .....	3341, 3342, 3343, 3344, 3345, 4446.
Electrical equipment, appliance, and component manufacturing .....	3351, 3352, 3353, 3359.
Transportation equipment manufacturing .....	3361, 3362, 3363, 3364, 3365, 3366, 3366, 3369.
Furniture and related product manufacturing .....	3371, 3372, 3379.
Miscellaneous manufacturing .....	3391, 3399.
Waste management and remediation .....	5622, 5629.
Hospitals/nursing and residential care facilities .....	6221, 6231, 6232, 6233, 6239.
Personal and laundry services .....	8122, 8123.
Residential/private households .....	8141.
Non-residential (commercial) .....	Not available. Codes only exist for private households, construction and leasing/sales industries.

<sup>a</sup> North American Industry Classification System.

*B. How is the preamble organized?*

The information presented in this preamble is organized as follows:

**I. General Information**

- A. Does this action apply to me?
- B. How is the preamble organized?
- II. Overview of Rulemaking
- III. Final Action and Response to Comments
  - A. Authority To Promulgate a FIP
  - B. Timing of GHG PSD FIP
  - C. Substance of GHG PSD FIP
  - D. Period for GHG PSD FIP To Remain in Place
  - E. Primacy of SIP Process
- IV. Statutory and Executive Order Reviews
  - A. Executive Order 12866—Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132—Federalism
  - F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

- G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Determination Under Section 307(d)
- L. Congressional Review Act
- V. Judicial Review
- VI. Statutory Authority

**II. Overview of Rulemaking**

In this rulemaking, EPA is establishing a FIP, which we call the GHG PSD FIP, or simply, the FIP, to apply in each of seven states that have not submitted by December 22, 2010, a corrective SIP revision to apply their

CAA PSD program to sources of GHGs. This is the deadline EPA established after the affected states indicated that they would not object to it, to ensure that a permitting authority would be in place as of January 2, 2011 to facilitate issuance of PSD permits for construction and modification of sources.

This preamble should be read in conjunction with the preamble for the proposed rulemaking for this action, which we call the GHG PSD FIP proposal or the FIP proposal;<sup>4</sup> and the SIP call rulemaking that is associated with this rulemaking, including (i) the proposed SIP call rulemaking, which we call the GHG PSD SIP call proposal or the SIP call proposal, and which accompanied the FIP proposal,<sup>5</sup> and (ii) the final SIP call rulemaking, which we call the GHG PSD SIP call or the SIP call. Background information for this

<sup>1</sup> For convenience, we refer to “states” in this rulemaking to collectively mean states and local permitting authorities.

<sup>2</sup> 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).

<sup>3</sup> Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule. 75 FR 31514 (June 3, 2010).

<sup>4</sup> 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).

<sup>5</sup> 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—Proposed rule, 75 FR 53892 (September 2, 2010).

rulemaking is found in those rulemakings and in the rulemakings referenced therein and will not be reiterated here.

By notices dated September 2, 2010, EPA published as companion actions the SIP call proposal and the FIP proposal. In the SIP call proposal, EPA proposed to find that 13 states with EPA-approved SIP PSD programs are substantially inadequate to meet CAA requirements because they do not appear to apply PSD requirements to GHG-emitting sources. For each of these states, EPA proposed to require the state (through a SIP call) to revise its SIP as necessary to correct such inadequacies. In the FIP proposal, EPA proposed a FIP to apply in any state that is unable to submit, by its deadline, a corrective SIP revision to apply the PSD program to sources of GHGs. The FIP would provide authority to EPA to issue PSD permits for construction or modification of appropriate GHG sources in the state.

On December 1, 2010, EPA promulgated the GHG PSD SIP call, and EPA published it by notice dated December 13, 2010.<sup>6</sup> In the SIP call, EPA finalized its finding that the SIPs of 13 states (comprising 15 state and local programs) are substantially inadequate to meet CAA requirements because they do not apply PSD requirements to GHG-emitting sources. In addition, EPA finalized a SIP call for each of these states, which required the state to revise its SIP as necessary to correct such inadequacies. Further, EPA established a deadline for each state to submit its corrective SIP revision. These deadlines, which differed among the states, ranged from December 22, 2010, to December 1, 2011.

Seven states received a SIP submittal deadline of December 22, 2010, based on information received from each state during the public comment period that they would not object to this deadline. These seven states are: (1) Arizona: Both Pinal County and Rest of State (excluding Maricopa County, Pima County, and Indian Country);<sup>7</sup> (2) Arkansas; (3) Florida; (4) Idaho; (5) Kansas; (6) Oregon; and (7) Wyoming.

On December 23, 2010, EPA issued a finding under CAA section 110(c)(1)(A) that each of the seven states “failed to make [the] required submission” of the

corrective SIP call-mandated SIP revision by its December 22, 2010 deadline. EPA notified each state of the finding by letter. Those letters are located in the docket for this rulemaking.

### III. Final Action and Response to Comments

#### A. Authority To Promulgate a FIP

In this rulemaking, EPA is finalizing the GHG PSD FIP as proposed for each of the seven states: (1) Arizona: Both Pinal County and Rest of State (excluding Maricopa County Pima County, and Indian Country);<sup>8</sup> (2) Arkansas; (3) Florida; (4) Idaho; (5) Kansas; (6) Oregon; and (7) Wyoming.

The CAA authority for EPA to promulgate a FIP is found in CAA section 110(c)(1), which provides—

The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—(A) finds that a State has failed to make a required submission \* \* \* unless the State corrects the deficiency, and [EPA] approves the plan or plan revision, before the Administrator promulgates such [FIP].

As noted earlier in this preamble, on December 23, 2010, EPA issued a finding that each of the seven states affected by this rule “failed to make [the] required submission” of the corrective SIP call-mandated SIP revision by its December 22, 2010 deadline. Accordingly, under CAA section 110(c)(1), EPA is required to promulgate a FIP for each of the states.

It should be noted that EPA specifically proposed the FIP for six of the seven states affected by this rulemaking, all except for Wyoming. EPA did not include Wyoming among the states for which EPA specifically proposed the SIP call, and, as a result, did not include Wyoming among the states for which EPA specifically proposed the FIP. However, in the proposed SIP call, EPA stated that it was soliciting comment on all the other states, and, if EPA received information indicating that another state should receive the SIP call, then EPA would, without a supplemental or further proposal, issue a final SIP call for that other state.<sup>9</sup> Similarly, EPA stated in the FIP proposal that if EPA issued a SIP call for that other state, and the other state did not submit a corrective SIP

revision by its deadline, then, EPA would finalize the FIP for that other state, too.<sup>10</sup>

We reiterate that each of the seven states affected by this rulemaking specifically indicated to EPA that it preferred that EPA promulgate a FIP to take effect by January 2, 2011—when sources in the state become subject to PSD—rather than EPA not promulgate a FIP until a later time. This is because each state sought to assure that, as of January 2, 2011, a permitting authority for GHG-emitting sources would be in place in the state. These states made this choice by indicating that they did not object to EPA establishing a SIP submittal date of December 22, 2010, when EPA made clear in the proposed SIP call and FIP that if the state did not submit the required SIP revision by that date, then EPA would promulgate the FIP the next day. 75 FR at 53904/2 (proposed SIP call); *id.* at 53889/2 (proposed FIP). For the most part, the remaining states that were subject to the SIP call indicated a later SIP submittal date, but they believe that although this will mean a short delay in the availability of a permitting authority for GHG-emitting sources in their state, that delay will not adversely affect their sources. EPA regional and headquarters officials conferred extensively with state officials concerning the states’ progress and plans and with the National Association of Clean Air Agencies.<sup>11</sup>

In this rulemaking, EPA is not taking final action to promulgate a FIP for any of the other states which EPA included in the FIP proposal. This is because for each of the other states, either EPA did not finalize the SIP call or EPA did not finalize the SIP call but established a SIP submittal deadline that has not yet arrived. As a result, EPA has not issued a finding of failure to submit the required SIP revision for any of these other states. It continues to be EPA’s intent that if any of these other states does not submit the required SIP revision by its deadline, then EPA will immediately issue a finding of failure to submit a required SIP submission and immediately promulgate a GHG PSD FIP for that state.

In comments received, some commenters stated, “Remarkably, EPA states that it will also directly promulgate a SIP call and FIP for any

<sup>6</sup> 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).

<sup>7</sup> EPA issued to Arizona a separate finding of substantial inadequacy, SIP call, and deadline for SIP submittal for each of Pinal County and for the rest of the state (excluding Maricopa County, Pima County, and Indian Country).

<sup>8</sup> In this rulemaking, EPA is finalizing for Arizona a separate GHG PSD FIP for each of Pinal County and for the rest of the state (excluding Maricopa County, Pima County, and Indian Country).

<sup>9</sup> 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—Proposed rule, 75 FR 53,895–6 (September 2, 2010).

<sup>10</sup> 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 53,886 (September 2, 2010).

<sup>11</sup> Declaration of Gina McCarthy, ¶¶4–5, pp. 3–4, “EPA’s Response To Motions To Stay,” *Coalition for Responsible Regulation v. EPA*, No. 09–1322 (and consolidated cases) (McCarthy Declaration).

states it has inadvertently omitted from its notice of proposed rulemaking.” Although the commenters do not elaborate upon this statement, they seem to imply that it would be improper for EPA to finalize a FIP for such states because we did not provide adequate notice and opportunity for comment.

The only state for which this comment may be relevant is Wyoming, as noted earlier in this preamble. We disagree with the commenters. In the proposal, we listed the states with approved SIP PSD programs for which we were not proposing a finding of substantial inadequacy and a SIP call, and so were not proposing a FIP. But we went on to specifically solicit comment on whether each of those states merited a finding, SIP call,<sup>12</sup> and, ultimately, a FIP; and we included citations to the relevant SIP provisions.<sup>13</sup> Moreover, we generally described the circumstances under which those states may merit a FIP. As a result, commenters had adequate notice that EPA could ultimately finalize a FIP for those states if and when they missed their SIP submittal deadlines, and they had full opportunity to comment if they had relevant views or information. This was discussed in greater detail in the SIP call rulemaking 75 FR at 77715/6.

#### B. Timing of GHG PSD FIP

In the GHG PSD FIP proposal, we stated:

If any of the states for which we issue the SIP Call does not meet its SIP submittal deadline, we will immediately issue a finding of failure to submit a required SIP submission, under CAA section 110(c)(1)(A), and immediately thereafter promulgate a FIP for the state. This timing for FIP promulgation is authorized under CAA section 110(c)(1), which authorizes us to promulgate a FIP “at any time within 2 years after” finding a failure to submit a required SIP submission. We intend to take these actions immediately in order to minimize

<sup>12</sup> During the comment period, Wyoming did send information indicating that, in Wyoming’s view, Wyoming did not have legal authority to apply PSD to GHG-emitting sources and therefore Wyoming should be included in the SIP call. A Wyoming environmental group provided comments during the comment period saying that it believed Wyoming did have legal authority to apply PSD to GHG-emitting sources. Accordingly, it is clear that the solicitation of comment was sufficient notice to the public. More detailed information regarding Wyoming and other states covered in this rulemaking may be found in the “Supplemental Information Document for Final 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,” located in the docket for this rulemaking.

<sup>13</sup> Thus, commenters are incorrect in characterizing EPA as having “inadvertently omitted [Wyoming] from its notice of proposed rulemaking.”

any period of time during which larger-emitting sources may be under an obligation to obtain PSD permits for their GHGs when they construct or modify, but no permitting authority is authorized to issue those permits.

75 FR at 53,889/2.

In this final rulemaking, we are proceeding in the same manner that we proposed, and for the same reasons. That is, we are exercising our discretion to promulgate the FIP for each of the seven affected states “immediately in order to minimize any period of time during which larger-emitting sources may be under an obligation to obtain PSD permits for their GHGs when they construct or modify, but no permitting authority is authorized to issue those permits.” 75 FR at 53889/2. We believe that acting immediately is in the best interests of the states and the regulated community.

EPA received comments that the process EPA has employed in this action, which was to propose the FIP as a companion rule to the proposed SIP call, and then to finalize the FIP immediately after making a finding that a state has not submitted the required SIP revision by its deadline, “is not how CAA section 110 works or how Congress intended it to work.” The commenter added that—

[O]nly after a state has \* \* \* failed to [submit a SIP revision] after an applicable period as specified in the CAA or EPA regulations \* \* \* and after EPA has made a determination that the SIP revision is deficient in one or more respects, may the Agency step in to propose a FIP rule. And only after taking that step could EPA then proceed \* \* \* [to take final action on the FIP.] Notwithstanding EPA’s strained and out-of-context emphasis on the isolated sentence fragment, “at any time within,” the very fact that the CAA affords EPA up to two full years in which to complete the cooperative task of considering whether a FIP is needed and how such a plan should be fashioned, and the corollary fact that the Act does not mandate any federal takeover in less than two years, militate against EPA’s approach here to FIP rulemaking. In particular, those facts undermine EPA’s assumption that it need not take the time to develop a proposed plan specifically directed at remedying identified deficiencies in a given state submission, and to give states and the regulated community a meaningful opportunity to comment on a proposed FIP that has been specifically developed to address the individual needs and circumstances of such a state. (Emphasis in original.)

EPA disagrees with these comments. As we stated in the proposed rule, CAA section 110(c)(1)(A) authorizes EPA to promulgate a FIP “at any time within 2 years after” finding a failure to submit a required SIP revision. We are

promulgating the FIP immediately because we wish to minimize any disruption in permitting for the larger GHG-emitting sources and we are doing so after consultation with the affected states. The seven states that are the subject of this rulemaking told EPA that they would not object to the promulgation of a FIP at the earliest possible deadline, or December 22, 2010, because that would ensure a permitting authority would be in place as of January 2, 2011. Without the FIP, these states would be without an approved program to issue PSD permits for GHG-emitting sources until the states submit, and EPA approves, a SIP revision. The FIP provides sources in these states an immediate mechanism to obtain required permits for construction and modification until the revised SIPs are approved.

As for commenters’ analysis of CAA section 110(c), that provision, by its terms, imposes no constraints on when EPA may propose a FIP. This stands in contrast to other CAA provisions that do impose requirements for the timing of proposals. See CAA sections 109(a)(1)(A), 111(b)(1)(B). In light of the lack of constraints in CAA section 110(c), EPA was free to propose the FIP at the same time that EPA proposed the SIP call. We do not agree that the overall construct of CAA section 110 imposes the implicit constraints that the commenter identifies.

Instead, what is important is that for each of the 13 states for which EPA specifically proposed the FIP, which were the same as the ones for which EPA proposed the SIP call, the public had adequate notice of the circumstances under which EPA proposed that the state would become subject to the FIP. Those circumstances were that if EPA finalized the SIP call, as proposed, for the state, and if the state did not submit a SIP revision applying its PSD program to GHG-emitting sources by the deadline, EPA would establish a FIP for that state. In fact, EPA did finalize the SIP call for all but one of those 13 states and is now finalizing the FIP for six of them. Further, EPA received comments on the proposed FIP from several states and/or industries located in states for which EPA proposed the FIP, which indicates that the FIP proposal provided adequate notice. See, e.g., comments identified in the rulemaking docket as document numbers 0084.1 (Texas), 0055.1 (Arkansas), 0066.1 (Texas Industry Project), and 0109.1 (National Mining Association).

Although for Wyoming EPA did not specifically propose the SIP call or FIP, the public had the same opportunity to

comment on the prospect of a FIP for Wyoming as the public did for the states for which EPA did specifically propose the FIP. This is because EPA solicited comment on whether to issue a SIP call for Wyoming (along with other states with approved PSD programs); made clear that if EPA received certain information, EPA would finalize the SIP call for Wyoming; and, further, made clear that if EPA issued a SIP call for Wyoming and Wyoming did not submit the required SIP by Wyoming's deadline, then EPA would finalize the FIP. In fact, Wyoming commented on the FIP. See comment identified in the rulemaking docket as document number 0079.1.

Moreover, EPA was clear that for each state subject to the SIP call that did not submit the required SIP revision by its SIP submittal deadline, EPA would immediately make a finding of failure to submit and immediately promulgate a FIP. EPA explained that this approach was needed to assure the availability of a permitting authority for sources in the state.

Finally, each of the states and the public in general had adequate notice of the terms of the FIP as it would apply in any state. Specifically, EPA indicated that the FIP would apply PSD to GHG-emitting sources at the Tailoring Rule thresholds.

Therefore, the FIP proposal was clear as to the circumstances under which EPA proposed to promulgate a FIP, the timing for the FIP, and the terms of the FIP. Moreover, each of those three things applied to each state that would become subject to the SIP call. Accordingly, the FIP proposal did, in fact, "give states and the regulated community a meaningful opportunity to comment on a proposed FIP that has been specifically developed to address the individual needs and circumstances of such a state," as the commenter argues the FIP proposal needed to do.

Several commenters raised an additional objection, which was that in their view, EPA failed to comply with the requirements of CAA section 307(d)(3) that (i) the proposed FIP include a summary of "the factual data on which the proposed rule is based" and "the major legal interpretations and policy considerations underlying the proposed rule"; and (ii) "[a]ll data, information, and documents \* \* \* on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule." (Emphasis added by one of these commenters.) One of these commenters explained that (a) in the SIP call proposal, EPA had made a detailed request that states provide information

as to whether their state law authorized the application of PSD to GHG-emitting sources; (b) this detailed request demonstrated that the proposal did not establish the legal basis for the SIP call; and (c) as a result, the FIP proposal did not include "information that is essential to determining whether a FIP for a given state is even appropriate and justified." (Emphasis in original.) This commenter added—

Only after EPA has received such information, and then taken the necessary time to evaluate the information and to make judgments as to whether or not a given state has authority under its SIP and other elements of state law to regulate GHGs under the PSD program—i.e., the steps EPA would have to take under CAA section 307(d)(3) to provide to the public a meaningful "summary" of "the factual data on which the proposed rule is based" and "the major legal interpretations and policy considerations underlying the proposed rule"—may EPA propose a FIP for any state that has been determined to lack that authority. (Emphasis in original.)

We disagree with this comment. The preamble for the FIP proposal included the CAA section 307(d)(3)-required "summary" of the factual basis and legal interpretations. To reiterate, EPA identified the states for which EPA was proposing the FIP, 75 FR at 53886 and table II-1 and 53889/1, and added that EPA would subject other states to the FIP if they, too, became subject to the SIP call, *id.* 53886 and table II-2 and 53889/2; described the timing for the FIP, *id.* 53889/2-3; described the substance of the FIP, *id.* 53889/3-53890/1; and explained that CAA section 110(c)(1) provided the legal basis, *id.* 53889/2. The purpose of the CAA section 307(d)(3) requirements is to provide the public with adequate notice, and these statements did so by making clear the circumstances under which EPA was proposing to promulgate a FIP and the timing and substance of the proposed FIP.

It is true that for any state, whether and when EPA would finalize the FIP for any state depended on other factors, including whether EPA would finalize the SIP call for that state, what deadline EPA would establish, and whether the state would submit its required corrective SIP revision by that deadline. But the FIP proposal put the public on notice, with sufficient specificity, as to EPA's plan. In any event, any FIP is necessarily dependent on other factors, including state actions. That is, under any circumstances, whether EPA finalizes any proposed FIP depends on whether (i) if the proposed FIP is based on the failure of a state to make a required submittal, the state makes the

required submittal; or (ii) if the proposed FIP is based on EPA's disapproval of a SIP revision, whether the state submits a revised SIP revision that EPA then approves.

Most broadly, commenters' approach—which is that EPA cannot propose a FIP in concert with a SIP call, but instead must proceed *in seriatim* by completing the SIP call first and then proposing the FIP—would result in lengthy delays in the establishment of a permitting authority to process GHG-emitting sources' PSD permit applications. As a result, commenters' approach could well cause delays in these sources' ability to undertake construction and modification projects.

We include related comments and responses in the Response to Comments document.<sup>14</sup>

### C. Substance of GHG PSD FIP

In the FIP proposal, we stated:

The proposed FIP constitutes the EPA regulations found in 40 CFR 52.21, including the PSD applicability provisions, with a limitation to assure that, strictly for purposes of this rulemaking, the FIP applies only to GHGs. Under the PSD applicability provisions in 40 CFR 52.21(b)(50), the PSD program applies to sources that emit the requisite amounts of any "regulated NSR pollutant[s]," including any air pollutant "subject to regulation." However, in states for which EPA would promulgate a FIP to apply PSD to GHG-emitting pollutants, the approved SIP already applies PSD to other air pollutants. To appropriately limit the scope of the FIP, EPA proposes in this action to amend 40 CFR 52.21(b)(50) to limit the applicability provision to GHGs.

We propose this FIP because it would, to the greatest extent possible, mirror EPA regulations (as well as those of most of the states). In addition, this FIP would readily incorporate the phase-in approach for PSD applicability to GHG sources that EPA has developed in the Tailoring Rule and expects to develop further through additional rulemaking. As explained in the Tailoring Rule, incorporating this phase-in approach—including Steps 1 and 2 of the phase-in as promulgated in the Tailoring Rule—can be most readily accomplished through interpretation of the terms in the definition "regulated NSR pollutant," including the term "subject to regulation."

In accordance with the Tailoring Rule, \* \* \* the FIP would apply in Step 1 of the phase-in approach only to "anyway sources" (that is, sources undertaking construction or modification projects that are required to apply for PSD permits anyway due to their non-GHG emissions and that emit GHGs in the amount of at least 75,000 tpy on a CO<sub>2e</sub> basis) and would apply in Step 2 of the phase-in approach to both "anyway sources" and sources that meet the 100,000/75,000-tpy threshold (that is, (i) sources that newly

<sup>14</sup> The Response to Comments document for the FIP can be found in the docket for this rulemaking.

construct and would not be subject to PSD on account of their non-GHG emissions, but that emit GHGs in the amount of at least 100,000 tpy CO<sub>2</sub>e, and (ii) existing sources that emit GHGs in the amount of at least 100,000 tpy CO<sub>2</sub>e, that undertake modifications that would not trigger PSD on the basis of their non-GHG emissions, but that increase GHGs by at least 75,000 tpy CO<sub>2</sub>e).

Under the FIP, with respect to permits for “anyway sources,” EPA will be responsible for acting on permit applications for only the GHG portion of the permit, and the state will retain responsibility for the rest of the permit. Likewise, with respect to permits for sources that meet the 100,000/75,000-tpy threshold, our preferred approach—for reasons of consistency—is that EPA will be responsible for acting on permit applications for only the GHG portion of the permit, that the state permitting authorities will be responsible for the non-GHG portion of the permit, and EPA will coordinate with the state permitting authority as needed in order to fully cover any non-GHG emissions that, for example, are subject to BACT because they exceed the significance levels. We recognize that questions may arise as to whether the state permitting authorities have authority to permit non-GHG emissions; as a result, we solicit comment on whether EPA should also be the permitting authority for the non-GHG portion of the permit for these latter sources.

We propose that the FIP consist of the regulatory provisions included in 40 CFR 52.21, except that the applicability provision would include a limitation so that it applies for purposes of this rulemaking only to GHGs.

75 FR 53889/3 to 53,890/1.

We are finalizing the FIP as we described it in the proposal, for the same reasons that we indicated in the proposal, all as quoted earlier in this preamble.

State, industry, and environmental commenters questioned how having EPA issue the GHG portions of a permit while allowing states under a FIP to continue to be responsible for issuing the non-GHG portions of a PSD permit will work in practice. Commenters raised concerns about the potential for a source to be “faced with conflicting requirements and the need to mediate among permit engineers making BACT decisions.”

We appreciate the commenters’ concern. We well recognize that dividing permitting responsibilities between two authorities—EPA for GHGs and the state for all other pollutants—will require close coordination between the two authorities to avoid duplication, conflicting determinations, and delays. We note that this situation is not without precedent. In many instances, EPA has been the PSD permitting authority but the state has accepted a delegation for parts of the PSD program, so that a source has had to go to both

the state and EPA for its permit. In addition, all nonattainment areas in the nation are in attainment or are unclassifiable for at least one pollutant, so that every nonattainment area is also a PSD area. In some of these areas, the state is the permitting authority for nonattainment new source review (NSR) and EPA is the permitting authority for PSD. As a result, there are instances in which a new or modifying source in such an area has needed a nonattainment NSR permit from the state and a PSD permit from EPA.

EPA is working expeditiously to develop recommended approaches for EPA regions and affected states to use in addressing the shared responsibility of issuing PSD permits for GHG-emitting sources. In addition, as discussed below, we intend for the GHG PSD FIP to remain in place only as long as necessary for states’ SIPs to be approved. Moreover, in this interim period, we intend to delegate permitting responsibility to those states that are able to implement it and that request it. States that request and receive a delegation will be responsible for issuing both the GHG part and the non-GHG part of the permit, and that will moot commenters’ concerns about split permitting. EPA’s most recent information is that of the seven states for which EPA is promulgating a FIP, four states have indicated to EPA that they intend to seek a delegation (Arizona, Idaho, Kansas, and Oregon) and a fifth has indicated that it is considering seeking a delegation (Arkansas).<sup>15</sup>

In addition, beginning on July 1, 2011, those states without authority to regulate GHG may not be able to issue PSD permits for non-GHG pollutants to sources that are major only because of their GHG emissions. This is because under the state’s approved SIP, these sources are not major sources. In this circumstance, EPA will also be the PSD permitting authority for the non-GHG pollutants, but, as discussed in detail earlier in this preamble, EPA intends to work closely with each state to develop mutually acceptable approaches—including delegation of this authority where possible—to maximize the opportunity for the state to assume as much of the permitting responsibilities as possible.

Finally, we are providing regulatory language to address Oregon. Oregon’s EPA-approved PSD SIP differs from the federal program with respect to which sources are subject to PSD. EPA is promulgating a FIP for Oregon that is consistent with the intent of the

Tailoring Rule and that accommodates the difference in the Oregon program. That is, as of January 2, 2011, sources in Oregon that are currently required to get PSD permits under the approved SIP will be subject to review under the FIP for greenhouse gases if they exceed the Tailoring Rule thresholds. As of July 1, 2011, the determination of which sources will be subject to PSD review for greenhouse gases under the FIP will be consistent with how applicability is determined under the current Oregon SIP for other regulated NSR pollutants.

#### *D. Period for GHG PSD FIP To Remain in Place*

In the FIP proposal, we stated our intention to leave any promulgated FIP in place for as short a period as possible, and to process any corrective SIP revision submitted by the state to fulfill the requirements of the SIP call as expeditiously as possible. Specifically, we stated:

After we have promulgated a FIP, it must remain in place until the state submits a SIP revision and we approve that SIP revision. CAA section 110(c)(1). Under the present circumstances, we will act on a SIP revision to apply the PSD program to GHG sources as quickly as possible. Upon request of the state, we will parallel-process the SIP submittal. That is, if the state submits to us the draft SIP submittal for which the state intends to hold a hearing, we will propose the draft SIP submittal for approval and open a comment period during the same time as the state hearing. If the SIP submittal that the state ultimately submits to us is substantially similar to the draft SIP submittal, we will proceed to take final action without a further proposal or comment period. If we approve such a SIP revision, we will at the same time rescind the FIP.

75 FR 53889/2–3.

We continue to have these same intentions. Thus, we reaffirm our intention to leave the GHG PSD FIP in place only as long as is necessary for the state to submit and for EPA to approve a SIP revision that includes PSD permitting for GHG-emitting sources. As discussed in more detail later in this preamble, EPA continues to believe that the states should remain the primary permitting authority.

#### *E. Primacy of SIP Process*

In the FIP proposal we stated,

This proposal [to promulgate a FIP] is secondary to our overarching goal, which is to assure that in every instance, it will be the state that will be that permitting authority. EPA continues to recognize that the states are best suited to the task of permitting because they and their sources have experience working together in the state PSD program to process permit applications. EPA seeks to remain solely in its primary role of providing

<sup>15</sup> McCarthy Declaration, pp. 136–38, Table II.

guidance and acting as a resource for the states as they make the various required permitting decisions for GHG emissions.

Accordingly, beginning immediately we intend to work closely with the states—as we have already begun to do since earlier in the year—to help them promptly develop and submit to us their corrective SIP revisions that extend their PSD program to GHG-emitting sources. Moreover, we intend to promptly act on their SIP submittals. Again, EPA's goal is to have each and every affected state have in place the necessary permitting authorities by the time businesses seeking construction permits need to have their applications processed and the permits issued—and to achieve that outcome by means of engaging with the states directly through a concerted process of consultation and support.

EPA is taking up the additional task of proposing this FIP and the companion SIP Call action only because the Agency believes it is compelled to do so by the need to assure businesses, to the maximum extent possible and as promptly as possible, that a permitting authority is available to process PSD permit applications for GHG-emitting sources once they become subject to PSD requirements on January 2, 2011.

In order to provide that assurance, we are obligated to recognize, as both states and the regulated community already do, that there may be circumstances in which states are simply unable to develop and submit those SIP revisions by January 2, 2011, or for some period of time beyond that date. As a result, absent further action by EPA, those states' affected sources confront the risk that they may have to put on hold their plans to construct or modify, a risk that may have adverse consequences for the economy.

Given these exigent circumstances, EPA proposes this plan, within the limits of our power, with the intent to make a back-up permitting authority available—and to send a signal of assurance expeditiously in order to reduce uncertainty and thus facilitate businesses' planning. Within the design of the CAA, it is EPA that must fill that role of back-up permitting authority. This FIP and the companion SIP Call action fulfill the CAA requirements to establish EPA in that role.

At the same time, we propose these actions with the intent that states retain as much discretion as possible in the hand of the states. In the SIP Call rulemaking, EPA proposes that states may choose the deadline they consider reasonable for submission of their corrective SIP revision. If, under CAA requirements, we are compelled to promulgate a FIP, we invite the affected state to accept a delegation of authority to implement that FIP, so that it will still be the state that processes the permit applications, albeit operating under federal law. In addition, if we are compelled to issue a FIP, we intend to continue to work closely with the state to assist in developing and submitting for approval its corrective SIP revision, so as to minimize the amount of time that the FIP must remain in place.

75 FR at 53890/1–2.

In this rulemaking, we continue to have the same intentions and for the

same reasons. Thus, we continue to believe that this action is necessary to ensure that sources in states with inadequate SIPs can obtain the necessary PSD permits for their GHG emissions. We have worked closely with states to establish reasonable deadlines for submitting revised SIPs and are finalizing this FIP based on deadlines agreed to by the affected states. We will continue to work with states, as we have done throughout the rulemaking process, to assist in development and expedite review of revised SIPs. In the meantime, however, this FIP is necessary for the seven states identified here in order to provide a permitting authority until an adequate SIP is submitted and approved.

#### IV. Statutory and Executive Order Reviews

##### A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action” because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

##### B. Paperwork Reduction Act

This action does not impose any new information collection burden. OMB has previously approved the information collection requirements contained in the existing regulations for PSD (*see, e.g.*, 40 CFR 52.21) and title V (*see* 40 CFR parts 70 and 71) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0003 and OMB control number 2060–0336 respectively. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this notice on small entities, small

entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (*see* 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Although this rule would lead to federal permitting requirements for certain sources, those sources are large emitters of GHGs and tend to be large sources. After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

##### D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, 2 U.S.C. 1531–1538) for state, local or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action merely prescribes EPA's action for states that have not met their existing obligation for PSD SIP submittal. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action merely prescribes EPA's action for states that have not met their existing obligation for PSD SIP submittal.

##### E. Executive Order 13132—Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely prescribes EPA's action for states that have not met their existing obligation for GHG PSD SIP submittal. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA

specifically solicited comment on the proposal for this action from state and local officials.

*F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not impose a FIP in any tribal area. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets E.O. 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal.

*H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action merely prescribes EPA's action for states that have not met their existing obligation for PSD SIP submittal.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule merely prescribes EPA's action for states that have not met their existing obligation for PSD SIP submittal.

*K. Determination Under Section 307(d)*

Pursuant to section 307(d)(1)(B) of the CAA, this action is subject to the provisions of section 307(d). Section 307(d)(1)(B) provides that the provisions of section 307(d) apply to “the promulgation or revision of an implementation plan by the Administrator under section 110(c) of this Act.”

*L. Congressional Review Act*

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 rule 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 does not constitute a “major rule” as defined by 5 U.S.C. 804(2). Therefore, this action will be effective December 30, 2010.

**V. Judicial Review**

Section 307(b)(1) of the CAA specifies which Federal Courts of Appeal have jurisdiction to hear petitions for review

of which final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.”

This rule is nationally applicable under CAA section 307(b)(1). The circumstances that have led to this rulemaking are national in scope and are substantially the same for each affected state. They include EPA's promulgation of nationally applicable GHG requirements that, in conjunction with the operation of the CAA PSD provisions, have resulted in GHG-emitting sources becoming subject to PSD; as well as EPA's finding of substantial SIP inadequacy, imposition of a SIP call, and establishment of a deadline for SIP submittal. Moreover, in this rule, EPA is applying uniform principles for promulgating the FIP for each of the affected states, concerning, *e.g.*, timing (that is, that EPA is promulgating the FIP for each affected state immediately) and scope (that is, that EPA is applying the FIP for GHG-emitting sources). The FIP for each affected state has substantially the same, if not identical, terms. This rulemaking action is supported by a single administrative record, and does not involve factual questions unique to the different affected states. In addition, this rule applies to multiple States across the country, and in several judicial circuits.

For similar reasons, this rule is based on determinations of nationwide scope or effect. For each of the seven affected States, EPA is determining that it is appropriate to promulgate the FIP immediately and to apply it to GHG-emitting sources, but not other sources. These determinations are the same for each of the states. The other provisions of the FIP are substantially the same, if not identical, for each affected state. Moreover, EPA is making these determinations and promulgating this action within the context of nationwide rulemakings and interpretation of the applicable CAA provisions, as noted above.

Thus, under section 307(b)(1) of the Act, judicial review of this final action is available by filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 28, 2011. Any such judicial

review is limited to only those objections that were raised with reasonable specificity in timely comments. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

## VI. Statutory Authority

The statutory authority for this action is provided by sections 110, 165, 301, and 307(d)(1)(B) of the CAA as amended (42 U.S.C. 7410, 7475, 7601, and 7407(d)(1)(B)). This action is subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Carbon monoxide, Environmental protection, Greenhouse gases, Hydrofluorocarbons, Incorporation by reference, Intergovernmental relations, Lead, Methane, Nitrogen dioxide, Nitrous oxide, Ozone, Particulate matter, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride, Sulfur oxides, Volatile organic compounds.

Dated: December 23, 2010.

**Lisa P. Jackson**,  
Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations 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.*

■ 2. Section 52.1987 is revised to read as follows:

#### § 52.1987 Significant deterioration of air quality.

\* \* \* \* \*

(d) The requirements of sections 160 through 165 of the Clean Air Act are not met for greenhouse gases since the plan does not include approvable procedures for permitting major sources of greenhouse gas emissions. Therefore, the Oregon Department of Environmental Quality rules identified in paragraph (a) of this section, and the Lane Regional Air Pollution Authority rules identified in paragraph (b) of this section, are hereby incorporated by reference with the following changes and made part of the applicable plan for the State of Oregon:

(1) The definition of “*Regulated NSR pollutant*” at § 52.21(b)(50) and the definition of “*Subject to regulation*” at

§ 52.21(b)(49) are incorporated by reference, replacing the definition of “*Regulated air pollutant*” at OAR 340–200–0020(97), for the purpose of greenhouse gases only;

(2) The provisions of § 52.21(q) *Public participation* are incorporated by reference for the purposes of EPA permits issued pursuant to this paragraph; and

(3) All references to “*Director*” in the Oregon Department of Environmental Quality rules and the Lane Regional Air Pollution Authority rules incorporated in this paragraph shall mean the EPA Administrator for the purposes of EPA permits issued pursuant to this paragraph.

■ 3. Section 52.37 is added to read as follows:

#### § 52.37 What are the requirements of the Federal Implementation Plans (FIPs) to issue permits under the Prevention of Significant Deterioration requirements to sources that emit greenhouse gases?

(a) The requirements of sections 160 through 165 of the Clean Air Act are not met to the extent the plan, as approved, of the states listed in paragraph (b) of this section does not apply with respect to emissions of the pollutant GHGs from certain stationary sources. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby made a part of the plan for each state listed in paragraph (b) of this section for:

(1) Beginning January 2, 2011, the pollutant GHGs from stationary sources described in § 52.21(b)(49)(iv), and

(2) beginning July 1, 2011, in addition to the pollutant GHGs from sources described under paragraph (a)(1) of this section, stationary sources described in § 52.21(b)(49)(v).

(b) Paragraph (a) of this section applies to:

(1) Arizona, Pinal County; Rest of State (Excludes Maricopa County, Pima County, and Indian Country);

(2) Arkansas;

(3) Florida;

(4) Idaho;

(5) Kansas;

(6) Wyoming.

(c) For purposes of this section, the “*pollutant GHGs*” refers to the pollutant GHGs, as described in § 52.21(b)(49)(i).

[FR Doc. 2010–32784 Filed 12–29–10; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 70

[EPA–HQ–OAR–2009–0517; FRL–9245–4]

RIN 2060–AQ63

### Action To Ensure Authority To Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule.

**SUMMARY:** The final greenhouse gas (GHG) Tailoring Rule includes a step-by-step implementation strategy for issuing Federally-enforceable permits to the largest, most environmentally significant sources beginning January 2, 2011. In this action, EPA is finalizing its proposed rulemaking to narrow EPA’s previous approval of State title V operating permit programs that apply (or may apply) to GHG-emitting sources. Specifically, in this final rule, EPA is narrowing its previous approval of certain State permitting thresholds for GHG emissions so that only sources that equal or exceed the GHG thresholds established in the final Tailoring Rule would be covered as major sources by the Federally-approved programs in the affected States. By raising the GHG thresholds that apply title V permitting to major sources in the affected States, this final rule will reduce the number of sources that will be issued Federally-enforceable title V permits and thereby significantly reduce permitting burdens for permitting agencies and sources alike in those States.

**DATES:** This final rule is effective on December 30, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0517. 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, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, Northwest, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding