

hexafluoride, Sulfur oxides, Volatile organic compounds.

Dated: January 10, 2011.

**Lisa P. Jackson,**  
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is revised 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 52.37 is amended by revising paragraph (b)(6) and adding paragraph (b)(7) 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?**

\* \* \* \* \*

(b) \* \* \*

(6) Wyoming;

(7) Jefferson County, Kentucky.

\* \* \* \* \*

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#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 52**

[EPA-R04-OAR-2009-0041-201058(c); FRL-9250-4]

#### **Approval and Promulgation of Implementation Plans; Mississippi: Prevention of Significant Deterioration; Nitrogen Oxides as a Precursor to Ozone; Correction**

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

**ACTION:** Final rule; correction and clarification.

**SUMMARY:** EPA is publishing today's notice to correct the regulatory table in the Code of Federal Regulations for Mississippi's state implementation plan (SIP) to clarify that the version of Mississippi's Prevention of Significant Deterioration (PSD) regulations incorporated into Mississippi's SIP on and after the January 19, 2011, effective date of the SIP revision approved by EPA on December 20, 2010, will be the version promulgated by the State on October 28, 2010 (state-effective date December 1, 2010), and approved by EPA on December 29, 2010. This version of Mississippi's PSD regulations includes both a SIP revision approved by EPA on December 20, 2010, and a

SIP revision approved by EPA on December 29, 2010. No new SIP revisions are approved by today's notice. Today's notice clarifies that the revision identified in EPA's December 20, 2010, final action (adding nitrogen oxides (NO<sub>x</sub>) as a precursor to ozone for PSD purposes) was included in the PSD rules that were incorporated into the SIP by EPA's December 29, 2010, final action regarding greenhouse gases (GHGs).

**DATES:** This action is effective January 19, 2011.

**ADDRESSES:** Copies of the documentation used in the action being corrected are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lynorae Benjamin, Chief, 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. Benjamin can be reached at 404-562-9040, or via electronic mail at [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

**SUPPLEMENTARY INFORMATION:** On November 28, 2007, Mississippi submitted a SIP revision to EPA to revise its SIP-approved PSD permitting regulations to address the requirements of the Ozone Implementation New Source Review Update to include the consideration of NO<sub>x</sub> as an ozone precursor. Specifically, Mississippi's November 28, 2007, SIP revision made changes to Mississippi's air quality regulations, APC-S-5—*Regulations for Prevention of Significant Deterioration*, to incorporate by reference the provisions at 40 CFR 52.21 as amended and promulgated as of June 15, 2007. On December 20, 2010, EPA published a final rule approving Mississippi's November 28, 2007, SIP revision (following a proposal and receiving no comments). See 75 FR 78300. According to the December 20, 2010, action, the effective date of EPA's December 20, 2010, final rule approving Mississippi's November 28, 2007, SIP revision is January 19, 2011. The January 19, 2011, effective date is now being corrected and clarified in today's action. This is necessary due to EPA taking final action on two SIP revisions so closely in time and to avoid any confusion regarding

which SIP rules are in effect in Mississippi.

On December 9, 2010, Mississippi submitted another SIP revision to EPA to revise its SIP-approved PSD permitting regulations to establish appropriate thresholds for determining which new stationary sources and modification projects become subject to Mississippi's PSD permitting requirements for their GHG emissions. Specifically, Mississippi's December 9, 2010, SIP revision made further changes to Mississippi's air quality regulations, APC-S-5—*Regulations for Prevention of Significant Deterioration*, to incorporate by reference the provisions at 40 CFR 52.21 as amended and promulgated as of September 13, 2010. EPA published a final rule approving Mississippi's December 9, 2010, SIP revision on December 29, 2010, and used the "good cause" clause to make the effective date of that final EPA action January 2, 2011. See 75 FR 81858. The Mississippi rules at issue in EPA's December 29, 2010, final action and EPA's December 20, 2010, final action were different versions of the same rules—thus resulting in potentially conflicting effective dates. In today's action, EPA is clarifying that both actions are final and that the rules in effect per the December 29, 2010, action are the rules that are approved into Mississippi's SIP and that are in effect in Mississippi.

To clarify the rules in the SIP, as part of today's action, EPA is correcting the regulatory table that identifies Mississippi's SIP to clarify which version of Mississippi's air quality regulations related to PSD permitting requirements will be in the SIP on and after January 19, 2011. Specifically, EPA is clarifying that it is not EPA's intent to supersede EPA's approval of Mississippi's December 9, 2010, SIP revision, with EPA's approval of Mississippi's November 28, 2007, SIP revision. Rather, the version of Mississippi's PSD regulations incorporated into Mississippi's SIP on and after the January 19, 2011, effective date of the SIP revisions approved by EPA on December 20, 2010, will be the version promulgated by the State on October 28, 2010 (state-effective date December 1, 2010), with the exception of certain language identified in EPA's December 29, 2010, notice. This version of Mississippi's PSD regulations includes both the SIP revision approved by EPA on December 20, 2010, and the SIP revision approved by EPA on December 29, 2010. No new SIP revisions are approved by today's action—this is simply a correction and clarification due to potentially

conflicting effective dates of EPA's previous final actions. This clarification is necessary solely as a result of the inadvertent timing of EPA's approval of Mississippi's two SIP revisions relating to different versions of the same rule, APC-S-5—*Regulations for Prevention of Significant Deterioration*, and the effective dates of those SIP revisions. The version of APC-S-5 that was approved into the SIP on December 29, 2010, with an effective date of January 2, 2011, is the version that is approved into the Mississippi SIP and in effect in Mississippi.

EPA has determined that today's action falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action are unnecessary because today's action clarifying the version of APC-S-5—*Regulations for Prevention of Significant Deterioration* that is approved in Mississippi's SIP as of January 19, 2011, has no substantive impact on EPA's December 20, 2010, approval, as the provisions related to NO<sub>x</sub> as a precursor for ozone incorporated by reference into Mississippi's November 28, 2007, SIP revision are the same as those provisions incorporated by reference into Mississippi's December 9, 2010, SIP revision. EPA can identify no reason why the public would benefit from having an opportunity to comment on this correction prior to this action being finalized, since this correction action does not approve any new revisions to Mississippi's SIP or alter EPA's rationale for its prior action approving Mississippi's adoption of NO<sub>x</sub> as a precursor for ozone for PSD permitting purposes.

EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on January 19, 2011. Section 553(d)(3) of the APA 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." 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) 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 action merely clarifies

which version of Mississippi's air quality regulations at APC-S-5—*Regulations for Prevention of Significant Deterioration* are in effect on and after January 19, 2011. For these reasons, EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

#### Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely makes a correction to the regulatory table in Mississippi's SIP to clarify which version of APC-S-5—*Regulations for Prevention of Significant Deterioration* will be in effect on and after January 19, 2011, relating to a SIP revision EPA approved on December 20, 2010, and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely makes a correction to the regulatory table in Mississippi's SIP to clarify which version of APC-S-5—*Regulations for Prevention of Significant Deterioration* will be effect on and after January 19, 2011, and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have Tribal implications because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it does 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 (64 FR 43255,

August 10, 1999). This rule merely makes a correction to the regulatory table to clarify which version of APC-S-5—*Regulations for Prevention of Significant Deterioration* will be in effect on and after January 19, 2011, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In addition, this rule does not involve technical standards, thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule also does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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 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 March 15, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 CAA section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Ozone, Nitrogen dioxide, Volatile organic

compounds, and Reporting and recordkeeping requirements.

Dated: January 3, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart 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 Prevention of Significant Deterioration for Air Quality				
All .....	.....	12/1/2010	12/29/2010 75 FR 81858	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.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–HQ–OAR–2010–0107; FRL–9253–2]

**Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revision Required of Louisville Metro Air Pollution Control District for Jefferson County, KY**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** The EPA is making a finding that the Louisville Metro Air Pollution Control District (LMAPCD) has failed to submit a revision to its EPA-approved state implementation plan (SIP) for Jefferson County, Kentucky, to satisfy requirements of the Clean Air Act (CAA) to apply Prevention of Significant Deterioration (PSD) requirements to

greenhouse gas (GHG)-emitting sources. By notice dated December 13, 2010, EPA issued a “SIP call” for 13 states (comprising 15 state and local programs, including Kentucky’s LMAPCD), requiring each state to revise its SIP as necessary to correct the SIP’s failure to apply PSD to such sources and establishing a SIP submittal deadline for each state. By this action, EPA is making a finding that the LMAPCD has failed to submit the required SIP revision by January 1, 2011, which is the SIP submittal deadline that EPA established in the SIP call for LMAPCD. This finding requires EPA to promulgate a federal implementation plan (FIP) for Jefferson County, Kentucky, applying PSD to GHG-emitting sources, and EPA is taking a separate action to promulgate the FIP immediately.  
**DATES:** This action is effective on January 14, 2011.  
**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. Lisa Sutton, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–3450; *fax number:* (919) 541–5509; *e-mail address:* [sutton.lisa@epa.gov](mailto:sutton.lisa@epa.gov). For information regarding the Louisville Metro Air Pollution Control District permitting authority, contact Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning