

## 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 CAA 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 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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 April 1, 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 29, 2010.

**Susan Hedman**,

*Regional Administrator, Region 5.*

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 YY—Wisconsin

- 2. Section 52.2570 is amended by revising paragraph (c)(121) to read as follows:

#### § 52.2570 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(121) On September 11, 2009, the Wisconsin Department of Natural Resources submitted a State Implementation Plan revision request. The State's ambient air quality standards were revised by adding fine

particulate matter, PM<sub>2.5</sub>, standards and revising the coarse particulate matter, PM<sub>10</sub>, standards. Wisconsin added annual and 24-hour PM<sub>2.5</sub> standards. It also revoked the annual PM<sub>10</sub> ambient air quality standard while retaining the 24-hour PM<sub>10</sub> standard.

(i) *Incorporation by reference*. The following sections of the Wisconsin Administrative Code are incorporated by reference:

(A) NR 404.02 Definitions. NR 404.02(4e) "PM<sub>2.5</sub>" as published in the Wisconsin Administrative Register, on September 30, 2009, No. 645, effective October 1, 2009.

(B) NR 404.04 Ambient Air Quality Standards. NR 404.04 (8) "PM<sub>10</sub>: PRIMARY AND SECONDARY STANDARDS." and NR 404.04(9) "PM<sub>2.5</sub>: PRIMARY AND SECONDARY STANDARDS" as published in the Wisconsin Administrative Register, on September 30, 2009, No. 645, effective October 1, 2009.

(ii) *Additional material*.

(A) NR 484.03 Code of Federal Regulations. NR 484.03(5) in Table 1 as published in the Wisconsin Administrative Register, on September 30, 2009, No. 645, effective October 1, 2009.

(B) NR 484.04 Code of Federal Regulations appendices. NR 484.04 (6), (6g), and (6r) in Table 2, as published in the Wisconsin Administrative Register, on September 30, 2009, No. 645, effective October 1, 2009.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2010-0697-201102, FRL-9259-8]

### Removal of Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Alabama

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

**ACTION:** Final rule.

**SUMMARY:** EPA is amending its regulations to remove language which narrowed its previous approval of Alabama's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program regarding thresholds for determining which new stationary sources and modification projects become subject to Alabama's PSD

permitting requirements for their greenhouse gas (GHG) emissions. On December 14, 2010, the State of Alabama, through the Alabama Department of Environmental Management (ADEM), provided a revision to its State Implementation Plan (SIP) to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to permitting requirements for GHG emissions in Alabama. EPA has taken final action to approve Alabama's December 14, 2010, SIP revision, and this makes EPA's narrowing of its previous approval of Alabama's PSD program as it relates to GHG permitting thresholds unnecessary. Today's action removes the regulatory language related to the narrowing action that is no longer applicable to Alabama as a result of EPA's approval of Alabama's December 14, 2010, SIP revision. Because this action is ministerial, EPA is applying the "good cause" exemption from public notice and comment requirements under the Administrative Procedure Act (APA).

**DATES:** This action is effective January 31, 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 to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61

Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9040. Ms. Benjamin can also be reached via electronic mail at [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

**SUPPLEMENTARY INFORMATION:**

- I. What is today's action?
- II. When is today's action effective?
- III. Statutory and Executive Order Reviews

**I. What is today's action?**

On December 30, 2010, EPA published a final rule entitled "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans." See 75 FR 82536 (Narrowing Rule). This action narrowed EPA's previous approval of PSD programs as applicable to GHG-emitting sources in SIPs in 24 States, including Alabama. Specifically, in the Narrowing Rule, EPA withdrew its previous approval of those programs to the extent they apply PSD to GHG-emitting sources below the thresholds in EPA's Tailoring Rule (75 FR 31514). Having narrowed its prior approval, EPA asked that each affected State withdraw from EPA consideration the part of its SIP that was no longer approved, and stated that approval of a SIP revision incorporating the Tailoring Rule thresholds into a SIP would count as removing these no-longer-approved provisions.

On December 14, 2010, the State of Alabama, through ADEM, provided a revision to its SIP to incorporate changes to Alabama's air quality regulations, Regulation 335-3-14-.04, *Air Permits Authorizing Construction in Clean Air Areas—Prevention of Significant Deterioration Permitting (PSD)*, to establish appropriate emission thresholds, consistent with EPA's Tailoring Rule, for determining which new stationary sources and modification projects become subject to Alabama's PSD permitting requirements for their GHG emissions. On December 29, 2010, EPA approved Alabama's December 14, 2010, SIP revision, effective January 18, 2011. See 75 FR 81863. As a result of EPA's approval of Alabama's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into Alabama's SIP, paragraph (b) in Section 52.53 of 40 CFR part 52, as included in EPA's Narrowing Rule—which applies the Narrowing Rule to Alabama's SIP—is no longer necessary. The current action removes the approval narrowing language relating to Alabama's SIP from the CFR to reflect that, to the extent the Narrowing Rule withdrew EPA approval from any provisions in the Alabama SIP,

those provisions have been removed from the SIP and thus the narrowing language in 40 CFR 52.1272(b) now serves no purpose. EPA is publishing this rulemaking to amend Section 52.53 of 40 CFR part 52 to remove this unnecessary regulatory language.

**II. When is today's action effective?**

This action removes content from the CFR that now serves no purpose because EPA has approved Alabama's SIP revision to establish thresholds for GHG permitting applicability consistent with EPA's Tailoring Rule. This is a ministerial but necessary action on the part of EPA. EPA has determined that today's action falls under the "good cause" exemption in section 553(b)(3)(B) of the APA. That provision authorizes agencies, upon finding "good cause," to dispense with public notice and participation where they are impracticable, unnecessary, or contrary to the public interest. EPA finds that it is unnecessary to provide public notice prior to finalizing this action, or to provide an opportunity for public comment on this action, because this action does not establish any new regulatory requirements, but instead merely removes language contained in 40 CFR 52.53 that no longer serves any purpose.

EPA also finds that there is good cause under APA section 553(d)(3) for this action to become effective on the date of publication. 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 removes language contained in 40 CFR 52.53 that no longer serves any purpose. For this reason, EPA finds good cause under APA section 553(d)(3) for this action to become effective on the date of publication.

**III. 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 removes unnecessary language contained in 40 CFR 52.53 related to Alabama’s SIP, and imposes no new requirements. 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 removes unnecessary language contained in 40 CFR 52.53 related to Alabama’s SIP, and does not impose any new enforceable duty, 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 removes unnecessary language contained in 40 CFR 52.53 related to Alabama’s SIP, 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 April 1, 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, Volatile organic compounds, and Reporting and recordkeeping requirements.

Dated: January 20, 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 B—Alabama

■ 2. Section 52.53 is revised to read as follows:

##### § 52.53 Approval Status.

With the exceptions set forth in this subpart, the Administrator approves Alabama’s plans for the attainment and maintenance of the national standards under section 110 of the Clean Air Act. Furthermore, the Administrator finds the plans satisfy all requirements of Part D, Title I, of the Clean Air Act as amended in 1977. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of RACT

requirements by July 1, 1980 for the sources covered by CTGs issued between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R04–OAR–2010–0811–201101, FRL–9259–7]

### Removal of Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Mississippi

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

**ACTION:** Final rule.

**SUMMARY:** EPA is amending its regulations to remove language which narrowed its previous approval of Mississippi’s New Source Review (NSR) Prevention of Significant Deterioration (PSD) program regarding emission thresholds for determining which new stationary sources and modification projects become subject to Mississippi’s PSD permitting requirements for their greenhouse gas (GHG) emissions. On December 9, 2010, the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), provided a revision to its State Implementation Plan (SIP) to establish appropriate thresholds for determining which new stationary sources and modification projects become subject to permitting requirements for GHG emissions in Mississippi. EPA has taken final action to approve Mississippi’s December 9, 2010, SIP revision, and this makes EPA’s narrowing of its previous approval of Mississippi’s PSD program as it relates to GHG permitting thresholds unnecessary. Today’s action removes the regulatory language related to the narrowing action that is no longer applicable to Mississippi as a result of EPA’s approval of Mississippi’s December 9, 2010, SIP revision. Because this action is ministerial, EPA is applying the “good cause” exemption from public notice and comment requirements under the Administrative Procedure Act (APA).

**DATES:** This action is effective January 31, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket