

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 8, 2011.
W.C. Early,
Acting Regional Administrator, Region III.
 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 V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by adding an entry for COMAR 26.11.19.09–1 to read as follows:

§ 52.1070 Identification of plan.

* * * * *
 (c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
*	*	*	*	*
26.11.19 Volatile Organic Compounds from Specific Processes				
26.11.19.09–1	Control of VOC Emissions from Industrial Solvent Cleaning Operations Other Than Cold and Vapor Degreasing.	4/19/10	2/22/11 [Insert page number where the document begins].	New Regulation.
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 [FR Doc. 2011–3719 Filed 2–18–11; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2010–0932; FRL–9268–7]

Approval and Promulgation of Implementation Plans; Kansas: Prevention of Significant Deterioration; Greenhouse Gas (GHG) Permitting Authority and Tailoring Rule Revision; Withdrawal of Federal GHG Implementation Plan for Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the State Implementation Plan (SIP) for Kansas, submitted by the Kansas Department of Health and Environment (KDHE) to EPA on October 4, 2010, for parallel processing. KDHE submitted the final version of this SIP revision on December 23, 2010. The SIP revision, which incorporates updates to KDHE’s air quality regulations, includes two significant changes impacting the regulation of greenhouse gas (GHG)

under Kansas’s New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. First, the SIP revision provides the State of Kansas with authority to issue PSD permits governing GHGs. Second, the SIP revision establishes emission thresholds for determining which new stationary sources and modification projects become subject to Kansas’s PSD permitting requirements for their GHG emissions. The first provision is required under the GHG PSD SIP call, which EPA published on December 13, 2010, and which required the state of Kansas to apply its PSD program to GHG-emitting sources. The second provision is consistent with the thresholds EPA established in the Tailoring Rule, published on June 3, 2010. EPA is approving this SIP revision because this SIP revision meets the requirements of the GHG PSD SIP Call. In addition, as a result of this approval, EPA is rescinding the Federal implementation plan (FIP)—as it relates to Kansas only—that had previously been imposed on December 30, 2010.

DATES: *Effective Date:* This rule will be effective February 22, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R07–OAR–2010–0932. All documents in the docket are listed on the [http://](http://www.regulations.gov)

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 Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, KS 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Kansas SIP, contact Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Mr. Gonzalez’s telephone number is (913) 551–7041; *e-mail address:* gonzalez.larry@epa.gov.

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I. What is the background for this final action?

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

In a separate action, the "GHG PSD SIP Call,"⁵ EPA called on the State of Kansas and 12 other states with SIPs that do not provide authority to issue PSD permits governing GHGs to revise their SIPs to provide such authority. In that action—along with the "Finding of Failure to Submit SIP Revisions Required for Greenhouse Gases" and GHG PSD FIP,⁶ which EPA finalized for some states, including Kansas, on December 23, 2010—EPA took steps to ensure that in the 13 states that do not

have authority to issue PSD permits to GHG-emitting sources at present, either the state or EPA would have the authority to issue such permits by January 2, 2011, or soon thereafter. EPA explained that although for most states, either the state or EPA is already authorized to issue PSD permits for GHG-emitting sources as of that date, Kansas and the other 12 states have EPA-approved PSD programs that do not include GHG-emitting sources and therefore do not authorize these states to issue PSD permits to such sources. Therefore, EPA issued a finding that Kansas and the other 12 states' SIPs are substantially inadequate to comply with CAA requirements. Accordingly, and as part of the same action, EPA also issued a SIP Call to require a SIP revision that applies their SIP PSD programs to GHG-emitting sources. EPA also established a SIP submittal deadline. In the proposed SIP call, EPA had stated that the deadline could range from as little as three weeks after the final SIP call was signed to as long as 12 months after the final SIP call was signed, and that each affected state was authorized to indicate to EPA a deadline to which it did not object. In the final SIP call, EPA established deadlines that ranged, for the various states, from December 23, 2010 (three weeks after signature), to December 1, 2011 (12 months after signature), based, in general, on each state's preference. Kansas was one of the states for which EPA proposed and finalized the SIP Call. The state's comments regarding the proposed SIP call, submitted October 4, 2010, are included in the docket for this rulemaking. In the SIP call, EPA established a SIP submittal deadline for Kansas of December 22, 2010, in accordance with Kansas's preferences in that letter.

In addition, in the SIP call rulemaking, EPA stated certain requirements that the corrective SIP revision must meet, which are that the corrective SIP revision must—

(i) Apply the SIP PSD program to GHG-emitting sources;

(ii) Define GHGs as the same pollutant to which the Light-Duty Vehicle Rule⁷ (LDVR) applies, that is, a single pollutant that is the aggregate of the group of six gases (carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)); and

(iii) Either limit PSD applicability to GHG-emitting sources by adopting the applicability thresholds included in the Tailoring Rule or adopt lower thresholds and

show that the state has adequate personnel and funding to administer and implement those lower thresholds.

In addition, if the corrective SIP revision adopts the Tailoring Rule thresholds, then it must either adopt the CO₂e metric and use short tons (as opposed to metric tons) for calculating GHG emissions in order to implement those thresholds, or assure that its approach is at least as stringent as under the Tailoring Rule, so that the state does not exclude more sources than under the Tailoring Rule.

75 FR 77713/1 to 77715/1.

In the companion "proposed GHG PSD FIP" rulemaking,⁸ EPA proposed a FIP that would give EPA authority to apply EPA's PSD program to GHG-emitting sources in any state unable to submit a corrective SIP revision by its deadline. After Kansas did not meet its SIP submission deadline of December 22, 2010, EPA issued a finding of Kansas's failure to submit a SIP revision⁹ and finalized the FIP for Kansas and six other states: Arizona, Arkansas, Florida, Idaho, Oregon, and Wyoming.¹⁰ In this notice, EPA stated its intent to leave the GHG PSD FIP in place only as long as necessary for a state to submit and EPA to approve a SIP revision that includes PSD permitting for GHG-emitting sources.

On October 4, 2010, in response to the Tailoring Rule and earlier GHG-related EPA rules, and in anticipation of the GHG PSD SIP Call rulemaking, KDHE submitted a draft revision of its air quality regulations to EPA for approval into the Kansas SIP to: (1) Provide the State of Kansas with the authority to regulate GHGs under its PSD program; and (2) establish appropriate emission thresholds and time-frames for determining which new or modified stationary sources become subject to Kansas's PSD permitting requirements for GHG emissions. Subsequently, on November 18, 2010, EPA published a proposed rulemaking to approve KDHE's October 4, 2010, SIP revision under parallel processing. 75 FR 70657. There, EPA stated that it "will not take final action on the GHG SIP Call for the state of Kansas if the state submits its

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

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

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

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

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

⁶ See footnotes 9 and 10.

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

⁸ "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).

⁹ "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 Revisions Required for Greenhouse Gases." 75 FR 81874 (December 29, 2010).

¹⁰ "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan; Final Rule." 75 FR 82246 (December 30, 2010).

final SIP revision to EPA prior to the final rulemaking for the GHG SIP Call,” indicating that the proposed SIP revision would be sufficient to address the inadequacies that serve as the basis for the SIP Call, and later the final GHG PSD FIP. 75 FR at 70663.

EPA’s November 18, 2010, proposed approval was contingent upon the State of Kansas providing a final SIP revision that was substantially the same as the draft revision proposed for approval. *Id.* After EPA issued a finding that Kansas did not submit a SIP revision by its December 22, 2010, deadline, and established a FIP for Kansas in actions signed on December 23, 2010, Kansas submitted its final SIP revision on December 23, 2010. This SIP revision is the same as the proposed revision KDHE submitted on October 4, 2010, for parallel processing. EPA is approving the final SIP revision in today’s action and is simultaneously withdrawing the FIP as it relates to the State of Kansas.

II. Analysis of Kansas’s SIP Revision

Section 110(k)(3) of the CAA provides that EPA shall approve a SIP revision as a whole if it meets all of the applicable requirements of the CAA. Kansas received a SIP call because its PSD program does not apply to GHGs, and as a result, Kansas is required to submit a SIP revision that applies PSD to GHGs and does so either at the Tailoring Rule thresholds or at lower thresholds, and, if the latter, then Kansas is required to demonstrate that it has adequate resources for implementation.

Kansas has submitted a SIP revision that provides this authority. Kansas’s SIP revision updates the incorporation by reference to EPA’s definition in 40 CFR 52.21(b)(49) for “subject to regulation” to explicitly include GHG as a regulated NSR pollutant under the CAA. In addition, the Kansas rules incorporate the same thresholds and phase-in schedule as the Tailoring Rule and they adopt the carbon dioxide equivalent (CO₂e) metric and use of short tons for determining the thresholds.

EPA has determined that this change to Kansas’s regulation meets the requirements of the SIP call. Thus, this change is consistent with the CAA and its implementing regulations regarding GHG. The changes included in this submittal are the same as EPA’s Tailoring Rule, and therefore comply with the requirements of the SIP call.

III. What is EPA’s response to comments received on the proposed action?

EPA received a single set of comments on the November 18, 2010, proposed

rulemaking to approve revisions to Kansas’s SIP. These comments, provided by the Air Permitting Forum (hereinafter referred to as “the Commenter”), raised concerns with regard to EPA’s November 18, 2010, proposed action. A full set of these comments is provided in the docket for today’s final action. A summary of the comments and EPA’s responses are provided below.

Generally, the adverse comments fall into five categories. First, the Commenter asserts that PSD requirements cannot be triggered by GHGs. Second, the Commenter characterizes EPA’s interpretation of the CAA by saying that Kansas will face a construction ban absent this SIP revision and asserts that this interpretation is incorrect. Furthermore, in a footnote, the Commenter expresses that EPA’s process of revising the state’s SIP is inconsistent with CAA section 110 because it does not provide for notice and comment on the final state action. Third, the Commenter expresses concerns regarding EPA’s previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule’s thresholds will not be obligated under federal law to obtain PSD permits prior to a SIP revision incorporating those thresholds. The Commenter explains that the planned SIP approval narrowing action is “inapplicable to this action and, if applicable, is illegal.” Fourth, the Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Lastly, the Commenter states: “If EPA proceeds with this action, it should make clear that any incorporation by reference conducted by Kansas would rest on the continued existence and validity of the federal regulations on which it [sic] the incorporation is based.” EPA’s response to these five categories of comments is provided below.

Comment 1: The Commenter asserts that PSD requirements cannot be triggered by GHGs. In its letter, the Commenter states: “[N]o area in the State of Kansas has been designated attainment or unclassifiable for greenhouse gases (GHGs), as there is no national ambient air quality standard (NAAQS) for GHGs. Therefore, GHGs cannot trigger PSD permitting.” The Commenter notes that it made this argument in detail in comments submitted to EPA on the Tailoring Rule and other related GHG rulemakings. The Commenter attached those previously submitted comments to its comments on the proposed rulemaking related to this action. Finally, the Commenter states

that “EPA should immediately provide notice that it is now interpreting the Act not to require that GHGs trigger PSD and allow Kansas to rescind that portion of its rules that would allow GHGs to trigger PSD.”

Response 1: EPA established the requirement that PSD applies to all pollutants newly subject to regulation, including non-NAAQS pollutants, in earlier national rulemakings concerning the PSD program, and EPA has not re-opened that issue in this rulemaking. Accordingly, these comments are not relevant to this rulemaking. In addition, EPA has explained in detail, in recent rulemakings concerning GHG PSD requirements, its reasons for disagreeing with these comments.

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

In any event, EPA disagrees with the Commenter’s underlying premise that PSD requirements are not triggered for GHGs when GHGs become subject to regulation as of January 2, 2011. As just noted, this has been well-established and discussed in connection with prior EPA actions, including, most recently, the Johnson Memo Reconsideration and the Tailoring Rule. In addition, EPA’s November 18, 2010, proposed

rulemaking notice provides the general basis for the Agency's rationale that GHGs, while not a NAAQS pollutant, can trigger PSD permitting requirements. The November 18, 2010, notice also refers the reader to the preamble to the Tailoring Rule for further information on this rationale. In that rulemaking, EPA addressed at length the comment that PSD can be triggered only by pollutants subject to the NAAQS and concluded that such an interpretation of the Act would contravene Congress's unambiguous intent. See 75 FR 31560–31562. Further discussion of EPA's rationale for concluding that PSD requirements are triggered by non-NAAQS pollutants such as GHGs appears in the Tailoring Rule Response to Comments document ("Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA's Response to Public Comments"), pp. 34–41; and in EPA's response to motions for a stay filed in the litigation concerning those rules ("EPA's Response to Motions for Stay," *Coalition for Responsible Regulation v. EPA*, D.C. Cir. No. 09–1322 (and consolidated cases)), at pp. 47–59, and are incorporated by reference here. These documents have been placed in the docket for today's action.

Comment 2: In its letter, the Commenter mentions that it provided comments on EPA's GHG PSD SIP Call and GHG PSD FIP rulemakings expressing that "EPA's interpretation of the Act to impose a construction ban based on Section 165(a) is incorrect." Further, the Commenter states: "No statutory language addressing implementation plan requirements can be construed to produce self-executing changes to SIPs or FIPs approved or promulgated under section 110 of the Act unless Congress enacts statutory provisions explicitly amending those SIPs or FIPs to incorporate the new requirements, thereby obviating the need for rulemaking under section 110(a) or (c) of the Act to effect revisions to those implementation plans." The Commenter also contends that there is no support for EPA's "permit moratorium" interpretation because the Commenter believes CAA section 165(a) is not self-executing, and approved SIPs and promulgated FIPs can only be changed through section 110 rulemakings to revise those plans. In support of its position, the Commenter cites to *United States v. Cineroy Corp.*, No. 09–3344 (7th Cir. October 12, 2010). The Commenter further states that Kansas would be able to issue PSD permits after January 2, 2011, even without GHG limits, because its current

SIP is approved and it would be acting consistently with that approved SIP. Further, the Commenter states that "EPA's rule contemplated that states have 3 years to revise their SIPs when an NSR-related change occurs and, assuming without conceding that EPA could impose PSD on GHGs, EPA should have followed that procedure in this case." Finally, the Commenter states that EPA's notice-and-comment process associated with the proposed SIP revision is inconsistent with section 110 because it does not provide for federal notice and comment on the final state action.

Response 2: EPA established the requirement that Kansas submit a corrective SIP revision in the SIP call rulemaking. As a result, the only issues relevant to this rulemaking concern whether Kansas's SIP submission meets the requirements of the SIP call and therefore should be approved. Issues concerning the validity of the SIP call, including the comments raised by the commenter, may have been relevant for the SIP call rulemaking but are not relevant for this rulemaking. Accordingly, these comments are not relevant for this rulemaking. EPA notes that the Agency provided an extensive response in the final GHG PSD SIP Call rulemaking to comments nearly identical to comments received on this rulemaking, 75 FR 77698. EPA incorporates by reference those responses, as contained in the GHG PSD SIP Call preamble and the Tailoring Rule Response to Comment document, into this rulemaking. The following gives examples of references in the GHG PSD SIP Call rulemaking preamble and record in which EPA responded to these, or substantially similar, comments:

With respect to the comments that (i) "EPA's interpretation of the Act to impose a construction ban based on Section 165(a) is incorrect"; (ii) "No statutory language addressing implementation plan requirements can be construed to produce self-executing changes to SIPs or FIPs approved or promulgated under section 110 of the Act unless Congress enacts statutory provisions explicitly amending those SIPs or FIPs to incorporate new requirements, thereby obviating the need for rulemaking under section 110(a) or (c) of the Act to effect revisions to those implementation plans"; and (iii) there is no support for EPA's "permit moratorium" interpretation because (in the Commenter's opinion) CAA section 165(a) is not self-executing and approved SIPs and promulgated FIPs can only be changed through section 110 rulemakings to revise those plans,

see, for example, 75 FR 77705 (footnote 16), and 75 FR 77710–77711. EPA notes further that the requirement of CAA section 165(a)(1) that stationary sources that emit the requisite quantity of pollutants subject to regulation obtain a pre-construction permit is mandated by the CAA and is automatically updated to apply to any pollutant newly subject to regulation; thus, contrary to the Commenter's statement, EPA is not construing the CAA to "produce self-executing changes to SIPs * * *" In addition, today's action does not create what the Commenter calls a "permit moratorium"; in fact, today's rule continues a permitting authority for GHG-emitting sources for Kansas that had already been established as of the GHG PSD permitting requirements effective date.¹¹ Further, no "self-executing changes" to Kansas's SIP are made in today's action; EPA is simply approving Kansas's SIP revision, submitted December 23, 2010, according to the proper process.

With respect to the comment that a decision by Judge Posner in *United States v. Cineroy Corp.*, No. 09–3344 (7th Cir. October 12, 2010), directly addresses this issue, see 75 FR 77705–77706, footnote 16.

With respect to the comment that Kansas would be able to issue PSD permits after January 2, 2011, even without GHG limits, because its current SIP is approved and it would be acting consistent with that approved SIP, EPA notes that it is true that as of January 2, 2011, Kansas could issue such a permit to cover the non-GHG pollutants emitted by a source that is major for a pollutant other than GHGs. If the source emits GHGs in at least the amount specified in the Tailoring Rule, however, then the source would also need a PSD permit for its GHG emissions. Kansas already has authority to issue GHG permits by virtue of the FIP delegation described in footnote 10.

With respect to the comment that "EPA's rule contemplated that states have 3 years to revise their SIPs when an NSR-related change occurs and, assuming without conceding that EPA could impose PSD on GHGs, EPA should have followed that procedure in this case," see 75 FR 77707–77708. In any event, the proper length of time EPA must provide states to act is also irrelevant to this rule because this action deals with a SIP revision actually

¹¹ For the period of January 2, 2011, to the effective date of this final action, EPA and KDHE have entered into a delegation agreement which delegated federal authority (established by the GHG PSD FIP for Kansas, as described above) to issue and modify PSD permits for sources of GHGs in Kansas to KDHE.

submitted by Kansas to EPA for approval. In addition, EPA has also addressed the issue of whether a construction ban applies in states with approved PSD SIPs that do not cover GHGs in its Response in Opposition to Petitioner's Emergency Motion for a Stay Pending Review, *Texas v. EPA*, No. 10–1425 (DC Cir. filed January 6, 2011), and in its Response in Opposition to Motion of National Association of Manufacturers et al. to File a Response as Amicus Curiae in Support of Petitioners' Stay Motion (also filed in the *Texas* case, on January 7, 2011).

EPA disagrees with the Commenter's statement that EPA's proposed action on Kansas's draft rules is inconsistent with CAA section 110 because it does not provide for federal notice and comment on the final state action. EPA's proposed approval was based on the draft form of the State of Kansas's regulations on which the state itself solicited public comment. As explained in our proposal at 75 FR 70657, EPA utilized a "parallel processing" procedure for this SIP revision. Under this procedure, EPA proposes rulemaking action concurrently with the state's procedures for approving a SIP submittal and amending its regulations (40 CFR part 51, appendix V, 2.3). EPA reviews the proposed SIP submittal in the same manner in which it reviews a final, adopted regulation, even though the regulation is not yet adopted in final form by the state. In doing so, EPA evaluates the draft regulation against the same approvability criteria as any other SIP submittal. If substantial changes are made between the draft SIP revision upon which EPA solicits comment and the final SIP revision submitted by the state, EPA reissues the final SIP revision for a new round of public comment. Thus, using the "parallel processing" procedure does not avoid any statutory requirements, and has not done so here. The proposal published November 18, 2010, gave the public the appropriate opportunity to comment on the substance of the October 4, 2010, SIP revision for which EPA is today issuing a final approval. In fact, the revision adopted by Kansas is identical to the draft regulation which EPA described in the proposal. Therefore, the Commenter and others had the opportunity to comment on the exact regulatory language which was finally adopted by Kansas and is approved in today's action.

Comment 3: The Commenter expresses concerns regarding the legality of narrowing prior SIP approvals if states cannot interpret their regulations to include the Tailoring Rule

thresholds within the phrase "subject to regulation."

Response 3: While EPA does not agree with the Commenter's assertion that the narrowing approach discussed in EPA's Tailoring Rule is illegal, the validity of the narrowing approach is irrelevant to the action that EPA is today taking for Kansas's December 23, 2010, SIP revision. EPA did not propose to narrow its approval of Kansas's SIP as part of this action, and in today's final action, EPA is acting to approve a SIP revision submitted by Kansas and is not otherwise narrowing its approval of prior submitted and approved provisions in the Kansas SIP. Accordingly, the legality of the narrowing approach is not at issue in this rulemaking.

Comment 4: The Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Specifically, the Commenter refers to the statutory requirements and executive orders for the Paperwork Reduction Act, the Regulatory Flexibility Act (RFA), the Unfunded Mandates Reform Act, and Executive Order 13132 (Federalism). Additionally, the Commenter mentions that EPA has never analyzed the costs and benefits associated with triggering PSD for stationary sources in Kansas, much less nationwide.

Response 4: EPA disagrees with the Commenter's statement that EPA has failed to meet applicable statutory and executive order review requirements. As stated in EPA's proposed approval of Kansas's October 4, 2010, proposed SIP revision, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. Accordingly, EPA approval, in and of itself, does not impose any new information collection burden, as defined in 5 CFR 1320.3(b) and (c), that would require additional review under the Paperwork Reduction Act. In addition, this SIP approval will not have a significant economic impact on a substantial number of small entities, beyond that which would be required by the state law requirements, so a regulatory flexibility analysis is not required under the RFA. Accordingly, this rule is appropriately certified under section 605(b) of the RFA. Moreover, as this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandates or significantly or uniquely affect small governments, such that it would be subject to the Unfunded Mandates Reform Act. Finally, this

action does not have federalism implications that would make Executive Order 13132 applicable, because it merely approves a state rule implementing a federal standard and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Today's rule is a routine approval of a SIP revision, approving state law, and does not impose any requirements beyond those imposed by state law. To the extent these comments are directed more generally to the application of the statutory and executive order reviews to the required regulation of GHGs under PSD programs, these comments are irrelevant to the approval of state law in today's action. However, EPA provided an extensive response to similar comments in promulgating the Tailoring Rule. EPA refers the Commenter to the sections in the Tailoring Rule entitled "*VII. Comments on Statutory and Executive Order Reviews*," 75 FR 31601–31603, and "*VI. What are the economic impacts of the final rule?*," 75 FR 31595–31601. EPA also notes that today's action does not in-and-of itself trigger the regulation of GHGs. To the contrary, GHGs are already being regulated nationally, PSD permitting for GHG emissions by Kansas is already specifically authorized under delegation of the existing FIP, and today's action simply approves existing state laws that accomplish the same thing as the FIP.

Comment 5: The Commenter states that "[i]f EPA proceeds with this action, it should make clear that any incorporation by reference conducted by Kansas would rest on the continued existence and validity of the federal regulations on which the incorporation is based." Further, the Commenter remarks on the ongoing litigation in the U.S. Court of Appeals for the DC Circuit. Specifically, regarding EPA's determination that PSD can be triggered by GHGs or is applicable to GHGs, the Commenter mentions that "any vacatur of those regulations should also be effective to vacate the SIP provision itself since the SIP would be referencing a regulation that no longer is valid or exists."

Response 5: EPA believes that it is most appropriate to take actions that are consistent with the federal regulations that are in place at the time the action is being taken. To the extent that any changes to federal regulations related to today's action result from pending legal challenges or other actions, EPA will process appropriate SIP revisions in accordance with the procedures provided in the Act and EPA's regulations. EPA notes that in an order dated December 10, 2010, the United

States Court of Appeals for the DC Circuit denied motions to stay EPA's regulatory actions related to GHGs. *Coalition for Responsible Regulation, Inc. v. EPA*, Nos. 09–1322, 10–1073, 10–1092 (and consolidated cases), Slip Op. at 3 (DC Cir. December 10, 2010) (order denying stay motions).

IV. What is the effect of this final action?

Final approval of Kansas's December 23, 2010, SIP revision will make Kansas's SIP adequate with respect to PSD requirements for GHG-emitting sources, thereby negating the need for the GHG PSD FIP for Kansas and the delegation agreement between EPA and KDHE. The FIP is also being withdrawn today. Additionally, final approval of Kansas's SIP revision will incorporate into the SIP the GHG emission thresholds for PSD applicability that were set forth in EPA's Tailoring Rule and included in the GHG PSD FIP for Kansas, ensuring that smaller GHG sources emitting below these thresholds will continue to not be subject to permitting requirements. Pursuant to section 110 of the CAA, EPA is approving the changes made in Kansas's December 23, 2010, proposed SIP revision into the state's SIP. However, as we noted in the proposed approval of the Kansas submittal, 75 FR 70663, this action only addresses the December 23, 2010, revisions relating to the regulation of GHGs under the state's PSD program. We intend to act on the state's revisions to its Title V program separately, as well as Kansas's separate submittal of changes to the applicability of the PSD program to contain ethanol production facilities (the "Ethanol Rule"). Furthermore, as Kansas has not adopted EPA's "Fugitive Emissions Rule," today's action does not address the Fugitive Emissions Rule.

The changes to Kansas's SIP-approved PSD program that EPA is approving today have been reviewed and determined to be consistent with the Tailoring Rule. Furthermore, EPA has determined that the December 23, 2010, revision to Kansas's SIP is consistent with section 110 of the CAA. *See, e.g.*, Tailoring Rule, at 75 FR 31561. As a result of EPA's approval today, the deficiency in Kansas's SIP is corrected and EPA no longer has the authority for the FIP for Kansas, and so EPA is also withdrawing the FIP for Kansas. 75 FR 82246 (December 30, 2010).

V. When is this action effective?

The effective date of today's final action is the date that this notice is published in the **Federal Register**. In accordance with 5 U.S.C. 553(d), EPA

finds there is good cause for this action to become effective on the date of publication. The effective date upon publication of this notice for this action is authorized under 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any substantively new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule withdraws the FIP, replaces the current regulatory requirements under the FIP with the same requirements under the SIP, shifts current permitting authority for GHGs to Kansas under its SIP instead of EPA under the FIP, and negates the need for the delegation agreement that delegated authority from EPA to KDHE to issue and modify PSD permits for sources of GHGs in Kansas. With this rule KDHE becomes the permitting authority for all pollutants (including GHGs) under the SIP-approved program. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective immediately upon publication.

VI. Final Action

EPA is taking final action to approve the state of Kansas's December 23, 2010, SIP revision, which incorporates changes into the Kansas Administrative Regulations (28–19–200a and 28–19–350). The SIP revision Kansas submitted on December 23, 2010, (1) provides the state with the authority to regulate GHGs under its PSD program, and (2) establishes appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting stationary sources in accordance with EPA's Tailoring Rule. EPA has made the determination that the December 23, 2010, SIP revision is approvable because it is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHGs.

Today's action also withdraws the FIP that was previously imposed in Kansas, and which this SIP revision displaces. Accordingly, EPA is rescinding the entirety of 40 CFR 52.37(b)(5) (applying the FIP to Kansas). EPA is taking this FIP withdrawal action as a final rule without providing an additional opportunity for public comment because EPA finds that the Administrative Procedure Act (APA)

good cause exemption applies here. Section 553 of the APA, 5 U.S.C. 553(b)(B), provides that when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to public interest, the Agency may issue a rule without providing notice and an opportunity to comment.

EPA has determined that it is unnecessary or contrary to the public interest to provide an additional opportunity for public comment on this action because the withdrawal of the FIP for Kansas is a necessary and simply ministerial act. Once EPA fully approves the SIP for Kansas as meeting the requirements of the GHG SIP call, and that approval is effective, EPA no longer has the authority for the GHG PSD FIP in Kansas. Because the SIP approval removes EPA's authority for the FIP, EPA believes it has no option but to withdraw the FIP. Therefore, EPA is taking this withdrawal action to remove the regulatory text that applies the GHG PSD FIP requirements to sources in Kansas, and that action is ministerial. If EPA were to decide to reconsider or reverse the SIP approval action, it would take any appropriate action with regard to the FIP at that time. For these reasons, it would serve no useful purpose to provide an additional opportunity for public comment on this issue.

EPA also finds that it would be contrary to the public interest to delay issuing this rule in order to offer additional comment opportunities. Delaying the withdrawal of the FIP would leave the FIP in place even though the SIP would now also be in place, which would result in duplicative permitting authority and, as a result of that, confusion to the public. Promulgation of this rule serves to clarify that sources initially covered by the FIP in Kansas are now covered only by the requirements of the Kansas SIP.

Further, EPA previously provided public notice that the withdrawal of a GHG PSD FIP for any state to which the FIP applied would be done at the same time as the approval of a GHG SIP for that state. *See* 75 FR at 82251. The public had opportunity to provide comment on this procedure during the rulemaking process for the GHG PSD FIP rule referenced above (footnotes 7 and 9). The rulemaking process for Kansas provided the public with ample opportunity to comment on the substantive issues related to the SIP approval. To provide an additional opportunity to comment on the FIP withdrawal action for Kansas, which cannot alter or affect the terms of the

SIP approval, would serve no useful purpose and is thus unnecessary.

For these reasons, EPA hereby finds for good cause, pursuant to section 553 of the APA, that it would be unnecessary and contrary to the public interest for EPA to offer an additional opportunity for public comment and a public hearing on this rule. Therefore, pursuant to section 307(d)(1) the requirements of 307(d), including the requirement for a public hearing, do not apply to this action.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. In addition, withdrawal of the GHG PSD FIP as a result of this approval of state law merely clarifies that the federal plan no longer applies. For those reasons, 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 amended 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 25, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 15, 2011.

Lisa P. Jackson,
Administrator.

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 A—General Provisions

§ 52.37 [Amended]

- 2. Section 52.37 is amended by removing and reserving paragraph (b)(5).

Subpart R—Kansas

- 3. In § 52.870 (c) the table is amended by revising the entry for "K.A.R. 28-19-350" to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
Construction Permits and Approvals				
28-19-350	Prevention of Significant Deterioration (PSD) of Air Quality.	01/02/2011	2/22/11 [Insert citation of publication].	Approval does not include Kansas's revisions to the Ethanol Rule (72 FR 24060, May 1, 2007) and to the Fugitive Emissions Rule (73 FR 77882, December 19, 2008).
*	*	*	*	*

* * * * *
 [FR Doc. 2011-3858 Filed 2-18-11; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[EPA-HQ-SFUND-2010-1068; FRL-9268-8]

Designation, Reportable Quantities, and Notification; Notification Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is issuing a technical amendment to correct telephone and facsimile numbers used to immediately notify the National Response Center. EPA issued a final rule in the **Federal Register** on April 4, 1985, that provided telephone numbers for any person in charge of a vessel or an offshore or an onshore facility to use as soon as he or she has knowledge of any release (other than a federally permitted release or

application of a pesticide) for the immediate notification to the National Response Center when there is a release of a hazardous substance from a vessel or facility in a quantity equal to or exceeding the reportable quantity in any 24-hour period. On July 9, 2002, EPA issued another final rule in the **Federal Register** that provided an additional telephone number, a facsimile number, and a telex number for the National Response Center. Recently, changes were made to these numbers by the National Response Center that is operated by the U.S. Coast Guard. This document is being issued to delete one of the telephone numbers, the facsimile number, and the telex number, and to provide a new facsimile number.

DATES: This final rule is effective on February 22, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-SFUND-2010-1068. 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 Superfund Docket, EPA/DC, EPA West, 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 Superfund Docket is (202) 566-0276.

FOR FURTHER INFORMATION CONTACT: Lynn Beasley, Regulation and Policy Development Division, Office of Emergency Management (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 564-1965; *fax number:* (202) 564-2625; *e-mail address:* beasley.lynn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Type of entity	Examples of affected entities
Federal Agencies	National Response Center and any Federal agency that may release or respond to releases of hazardous substances.
State and Local Governments	State Emergency Response Commissions, and Local Emergency Planning Committees.
Responsible Parties	Those entities responsible for the release of a hazardous substance from a vessel or facility.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How can I get copies of this document and other related information?

- The current information is as follows:
- Docket ID No. EPA-HQ-SFUND-2010-1068.
 - Federal eRulemaking Portal: <http://www.regulations.gov>.

II. What does this correction do?

This technical amendment is a correction that is being issued to delete one of the telephone numbers, the facsimile number, and the telex number, and to provide a new facsimile number

for the person in charge of a vessel or an offshore or an onshore facility to use to contact the National Response Center (NRC). The NRC is operated by the U.S. Coast Guard.

On April 4, 1985, (50 FR 13456) EPA issued a final rule in the **Federal Register** that provided telephone numbers for any person in charge of a vessel or an offshore or an onshore facility to use as soon as he or she has knowledge of any release (other than a federally permitted release or application of a pesticide) for the immediate notification to the NRC when there is a release of a hazardous substance from a vessel or facility in a quantity equal to or exceeding the reportable quantity in any 24-hour period (see 40 CFR 302.6(a)). On July 9, 2002, EPA issued another final rule in the **Federal Register** that provided an additional telephone number, a facsimile number, and a telex number for the NRC. Recently, changes were made to these numbers.

III. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical amendment final without prior proposal and opportunity for comment, because EPA is merely correcting information that has become out of date since the previously published final rule. The contact information for the NRC listed in 40 CFR 302.6 is no longer correct. Because the NRC receives notifications of hazardous substance release information, it is important that the public has the correct information to make such notifications. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).