

Order 13175 does not apply to this action.

*Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This SIP disapproval under section 110 will not in-and-of itself create any new regulations but simply disapproves certain state requirements for inclusion into the SIP.

*Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*National Technology Transfer and Advancement Act*

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

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

Executive Order 12898 (59 FR 7629 Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs

Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this action. In reviewing SIP submissions, EPA’s role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely disapproves certain state requirements for inclusion into the SIP under section 110 of the CAA and will not in-and-of itself create any new requirements. Accordingly, it 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.

*Congressional Review*

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).

*Statutory Authority*

The statutory authority for this action is provided by section 110 of the CAA, as amended (42 U.S.C. 7410).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: June 28, 2011.

**Karl Brooks,**

*Regional Administrator, Region 7.*

[FR Doc. 2011–17741 Filed 7–19–11; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R09–OAR–2011–0131, FRL–9317–9]

**Approval and Promulgation of Air Quality Implementation Plans; State of California; Regional Haze State Implementation Plan and Interstate Transport Plan; Interference With Visibility Requirement**

*Correction*

In rule document 2011–14479, appearing on pages 34608–34611, in the issue of June 14, 2011, make the following correction:

On page 34608, in the second column, in the Environmental Protection Agency document, the subject is corrected to appear as above.

[FR Doc. C1–2011–14479 Filed 7–19–11; 8:45 am]

**BILLING CODE 1505–01–D**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R06–OAR–2011–0031; FRL–9440–7]

**Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the New Mexico Environment Department (NMED) to EPA on December 1, 2010. This SIP revision modifies New Mexico’s Prevention of Significant Deterioration (PSD) program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to New Mexico’s PSD permitting requirements for their greenhouse gas (GHG) emissions. EPA is fully approving New Mexico’s December 1, 2010, PSD SIP revision because the Agency has determined that this PSD SIP revision is in accordance with section 110 and part C of the Federal Clean Air Act and EPA regulations regarding PSD permitting for GHGs.

**DATES:** This final rule will be effective August 19, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2011–0031. 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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning today's final rule, please contact Ms. Melanie Magee (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-7161. Ms. Magee can also be reached via electronic mail at [magee.melanie@epa.gov](mailto:magee.melanie@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, whenever "we", "us", or "our" is used, we mean the EPA.

**Table of Contents**

- I. What final action is EPA taking?
- II. What is the background for this action?
- III. What are EPA's responses to comments received on the proposed action?
- IV. Statutory and Executive Order Reviews

**I. What final action is EPA taking?**

EPA is fully approving New Mexico's December 1, 2010, SIP submittal, relating to PSD requirements for GHG-

emitting sources. Specifically, New Mexico's December 1, 2010, proposed SIP revision establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the determination that this SIP submittal is approvable because it is in accordance with the Clean Air Act (CAA) and EPA regulations regarding PSD permitting for GHGs.

As explained in our proposed approval of the New Mexico December 1, 2010, SIP revision, 76 FR 20907 (April 14, 2011), since EPA is finalizing its approval of New Mexico's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into New Mexico's SIP, then paragraph (d) in § 52.1634 of 40 CFR part 52, added in EPA's PSD SIP Narrowing Rule to codify the limitation of EPA's approval of New Mexico's PSD SIP to exclude the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds, is no longer necessary. In today's action, EPA is also amending § 52.1634 of 40 CFR part 52 to remove this unnecessary regulatory language.

Today, we are approving the December 1, 2010, New Mexico PSD SIP revision as we proposed and find that the SIP revision complies with section 110 and part C of the Federal Clean Air Act and EPA regulations regarding PSD permitting for GHGs.

**II. What is the background for this action?**

This section briefly summarizes EPA's recent GHG-related actions that provide the background for today's action. More detailed discussion of the background is found in the preambles for those actions, particularly in the background section of what we call the PSD SIP Narrowing Rule.<sup>1</sup>

*A. GHG-related Actions*

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action on the New Mexico SIP. 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,<sup>2</sup> the "Johnson Memo

<sup>1</sup> "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule." 75 FR 82536 (December 30, 2010).

<sup>2</sup> "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section

Reconsideration,"<sup>3</sup> the "Light-Duty Vehicle Rule,"<sup>4</sup> and the "Tailoring Rule."<sup>5</sup> Taken together and in conjunction with the CAA, 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, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

PSD is implemented through the SIP system, and so in December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP call and, for some of these states, a FIP.<sup>6</sup> Recognizing that other states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tons per year (tpy) of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA issued the GHG PSD SIP Narrowing Rule. Under that rule, EPA

202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

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

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

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

<sup>6</sup> Specifically, by notice dated December 13, 2010, EPA finalized a "SIP Call" that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. "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," 75 FR 77698 (Dec. 13, 2010). EPA has begun making findings of failure to submit that would apply in any state unable to submit the required SIP revision by its deadline, and finalizing FIPs for such states. See, e.g., "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); "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan," 75 FR 82246 (December 30, 2010). Because New Mexico's SIP already authorizes New Mexico to regulate GHGs once GHGs become subject to PSD requirements on January 2, 2011, New Mexico is not subject to the proposed SIP Call or FIP.

withdrew its approval of the affected SIPs to the extent those SIPs applied PSD requirements to GHG emissions from GHG-emitting sources below the Tailoring Rule thresholds.

#### B. New Mexico's Actions

On June 24, 2010, New Mexico provided a letter to EPA, in accordance with a request to all States from EPA in the Tailoring Rule, with confirmation that the State has the authority to regulate GHG in its PSD program. The letter confirmed that current New Mexico rules require regulating GHGs at the existing 100/250 tpy threshold, rather than at the higher thresholds set in the Tailoring Rule because the state does not have the authority to apply the meaning of the term "subject to regulation" established in the Tailoring Rule. New Mexico also submitted a letter on September 14, 2010, in response to the proposed GHG SIP Call, again confirming that EPA correctly classified New Mexico as a state with authority to apply PSD requirements to GHGs. The September 14, 2010, letter also states that NMED is pursuing rulemaking activity to define the terms "greenhouse gas" and "subject to regulation." See the docket for this proposed rulemaking for copies of New Mexico's June 24, 2010, and September 14, 2010, letters.

In the PSD SIP Narrowing Rule, published on December 30, 2010, EPA withdrew its approval of New Mexico's SIP—among other SIPs—to the extent that SIP applies PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the Tailoring Rule.<sup>7</sup> As a result, New Mexico's current approved SIP provides the state with authority to regulate GHGs, but only at and above the Tailoring Rule thresholds, and thus federally requires new and modified sources to receive a PSD permit based on GHG emissions only if they emit at or above the Tailoring Rule thresholds.

New Mexico has amended its state regulations to incorporate the Tailoring Rule thresholds, and has submitted the adopted regulations as revisions to the New Mexico SIP. EPA's approval of the New Mexico revisions will clarify the applicable thresholds in the New Mexico SIP and incorporate state law changes adopted at the local level into the federally-approved SIP.

The basis for this SIP revision is that limiting PSD applicability to GHG sources to the higher thresholds in the

Tailoring Rule is consistent with the SIP provisions that provide required assurances of adequate resources, and thereby addresses the flaw in the SIP that led to the PSD SIP Narrowing Rule. Specifically, CAA section 110(a)(2)(E) includes as a requirement for SIP approval that States provide "necessary assurances that the State \* \* \* will have adequate personnel [and] funding " to carry out such [SIP]." In the Tailoring Rule, EPA established higher thresholds for PSD applicability to GHG-emitting sources on grounds that the states generally did not have adequate resources to apply PSD to GHG-emitting sources below the Tailoring Rule thresholds,<sup>8</sup> and no State, including New Mexico, asserted that it did have adequate resources to do so.<sup>9</sup> In the PSD SIP Narrowing Rule, EPA found that the affected states, including New Mexico, had a flaw in their SIPs at the time they submitted their PSD programs, which was that the applicability of the PSD programs was potentially broader than the resources available to them under their SIP.<sup>10</sup> Accordingly, for each affected state, including New Mexico, EPA concluded that EPA's action in approving the SIP was in error, under CAA section 110(k)(6), and EPA rescinded its approval to the extent the PSD program applies to GHG-emitting sources below the Tailoring Rule thresholds.<sup>11</sup> EPA recommended that States adopt a SIP revision to incorporate the Tailoring Rule thresholds, thereby (i) assuring that under State law, only sources at or above the Tailoring Rule thresholds would be subject to PSD; and (ii) avoiding confusion under the federally-approved SIP by clarifying that the SIP applies to only sources at or above the Tailoring Rule thresholds.<sup>12</sup>

The portions of the submitted SIP revision at 20.2.70.7(AL)(3) NMAC and 20.2.74.7(AZ)(6) NMAC act to limit the enforceability of the definition of "subject to regulation" in the event of an adverse federal court determination in certain GHG-related matters. EPA received a comment regarding the effect of such court actions, and now clarifies its interpretation of these provisions in response. The provisions state that in the event of a federal court determination that invalidates or renders unenforceable the Tailoring Rule, "the definition 'subject to regulation' shall be enforceable by the Department only to the extent that it is

enforceable by US EPA." EPA reads this provision to mean that the state will wait for and follow EPA's interpretation of the effect of such a court decision regarding the enforceability of these SIP revisions by EPA before altering its own application of that term. EPA approves the SIP on the basis of this interpretation. If a court issues such a decision, EPA intends to promptly describe the impact of the court's decision on the enforceability of its regulations.

#### III. What are EPA's responses to comments received on the proposed action?

EPA received one comment letter from Tri-State Generation and Transmission Association, Inc. in response to the proposed rulemaking. The comment letter is available for review in the docket for this rulemaking. A summary of the comments and EPA's responses are provided below.

*Comment 1:* Commenter states that its comments pertain to EPA's proposed approval of the PSD portion of the New Mexico GHG Tailoring Rule. Commenter maintains a policy position opposing regulation of greenhouse gas emissions under the Clean Air Act, including its permitting provisions. The fact that PSD and Title V permitting thresholds need "tailoring" to be appropriate for greenhouse gases demonstrates that the Clean Air Act is not intended to regulate greenhouse gas emissions.

*Response 1:* We refer Commenter to the "Tailoring Rule" (Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule" 75 FR 31514 (June 3, 2010)) as well as our proposed rulemaking notice at 76 FR 20907 (April 14, 2011) that cites to and provides information on our national GHG actions and that provides the general basis for the regulation of GHGs under PSD permitting requirements. See footnotes 1–4 at 76 FR 20908, Footnote 6 at 20909. As we have detailed in those notices, EPA established that PSD applies to all pollutants newly subject to regulation, including non-NAAQS pollutants such as GHGs, in prior actions, and EPA has not re-opened that issue in this rulemaking. Accordingly, we do not believe these comments are relevant to this rulemaking.

*Comment 2:* Commenter is mindful of the many legal challenges to EPA's authority to regulate GHGs, and is concerned about what effect a stay, remand, or vacatur of one or all of the federal GHG-related rules would have on the New Mexico SIP revision. Commenter supports inclusion of

<sup>7</sup> "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule." 75 FR 82536 (December 30, 2010).

<sup>8</sup> Tailoring Rule, 75 FR 31,517/1.

<sup>9</sup> SIP Narrowing Rule, 75 FR 82,540/2.

<sup>10</sup> *Id.* at 82,542/3.

<sup>11</sup> *Id.* at 82,544/1.

<sup>12</sup> *Id.* at 82,540/2.

“enforceability” language at 20.2.70.7(AL)(3) NMAC and 20.2.74.7(AZ)(6) NMAC.

*Response 2:* As discussed above, EPA is finalizing its approval of the enforceability clause at 20.2.74.7 and interprets that clause to indicate that the state will wait for and follow EPA’s interpretation of the effect of any adverse court decision regarding the enforceability of these SIP revisions. If a court acts adversely, EPA intends to promptly describe the impact of the court’s decision on the enforceability of its regulations.

*Comment 3:* Commenter understands the importance of having the Tailoring Rule amendments in place at the state level. It would create an unreasonable burden on NMED’s Air Quality Bureau, and all permit holders, should it be required that GHGs be permitted at the 100/250 tpy levels. Within that context, Commenter remains concerned about the practicalities of regulation of GHGs via air quality permits.

*Response 3:* We refer Commenter to our proposal for this final action that discusses the basis for a SIP revision that limits PSD applicability to GHG sources to the higher thresholds in the Tailoring Rule. While we appreciate Commenter’s general concern about the practicalities of regulating of GHGs through air quality permits, Commenter did not provide any specific examples in the record to be able to adequately respond to this generalized statement. In addition, as discussed above, the requirement that sources seek PSD permits for GHG emissions was not established in this rulemaking, and was not reopened in this rulemaking. In fact, the State makes clear that GHG PSD permitting was required under its SIP prior to this rulemaking. We refer Commenter to New Mexico’s June 24, 2010, and September 14, 2010, letters (mentioned elsewhere in this notice) and that are in the docket for this rulemaking.

*Comment 4:* Commenter states the SIP revision was made in an expedited timeframe, despite the fact that NMED, through its membership in the National Association of Clean Air Agencies (NACAA) and NACAA’s December 28, 2009 letter to EPA about the Tailoring Rule, requested that EPA provide more time to states to afford consideration of the effects of and necessary regulatory changes for the implementation of the federal Tailoring Rule. EPA’s expedited timeframe contributes to regulatory uncertainty.

*Response 4:* While we hear Commenter’s concerns, we do not believe the comment is relevant to the scope of the action before us and we

disagree with Commenter. We refer Commenter to the proposal for this action, which states that New Mexico amended its state regulations to incorporate the Tailoring Rule thresholds and timely submitted the state-adopted regulations as revisions to the state’s SIP thereby contributing to regulatory certainty.

*Comment 5:* Commenter states that in the state administrative rulemaking hearing, several of Commenter’s issues were addressed, however inconclusively. Since uncertainty remains on various issues Commenter raised, Commenter re-states some of those issues. In short, Commenter raises issues related to Best Available Control Technology (BACT), New Source Performance Standards (NSPS) for GHG, Carbon Capture Sequestration (CCS) and GHG Reporting and Cap and Trade issues.

*Response 5:* This current rulemaking action concerns whether the regulatory revisions relating to PSD requirements for GHG-emitting sources that NMED submitted to EPA on December 1, 2010, that seek to establish the appropriate emission thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA’s Tailoring Rule, are approvable. The above comments raise issues that are outside the scope of this narrow rulemaking action and that we do not believe are relevant to the current action.

#### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. 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 Clean Air Act; 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 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, and Reporting and recordkeeping requirements.

Dated: June 30, 2011.

**Al Armendariz,**

*Regional Administrator, Region 6.*

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 GG—New Mexico**

■ 2. Section 52.1620 is amended in paragraph (c) by revising the entry for Part 74 under “New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality” to read as follows:

**§ 52.1620 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA APPROVED NEW MEXICO REGULATIONS**

State citation	Title/subject	State approval/ effective date	EPA approval date	Comments
<b>New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality</b>				
Part 74	Permits—Prevention of Significant Deterioration.	1/1/2011	7/20/2011	[Insert <i>FR</i> page number where document begins].

**§ 52.1634 [Amended]**

■ 3. Section 52.1634 is amended by removing and reserving paragraph (d).

[FR Doc. 2011–18125 Filed 7–19–11; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R02–OAR–2010–1025; FRL–9436–2]

**Approval and Promulgation of Air Quality Implementation Plan; New Jersey and New York; Final Disapproval of Interstate Transport State Implementation Plan Revision for the 2006 24-Hour PM<sub>2.5</sub> NAAQS**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to disapprove the New Jersey and the New York State Implementation Plan (SIP) revisions submitted to address significant contribution to nonattainment or interference with maintenance in another state with respect to the 2006 24-hour fine particle (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS). On January 20, 2010, New Jersey submitted a SIP revision to address sections of the Clean Air Act (CAA) concerning interstate transport requirements, and the sections of the CAA concerning infrastructure requirements. On March 23, 2010, New

York submitted a SIP revision to address the section of the CAA concerning interstate transport, and sections 110(a)(1) and (2) of the CAA concerning infrastructure SIP requirements. In this action, EPA is taking final action to disapprove the portion of the New Jersey and the New York SIP revisions that addresses the requirement prohibiting a state’s emissions from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in any other state. The remaining elements of the submittals are not addressed in this action and will be addressed in a separate action. The intended effect of this action will be the implementation of a Federal Implementation Plan (FIP) for the State no later than 2 years from date of the disapproval. The proposed Transport Rule, when final, is the FIP that EPA intends to implement for the State.

**DATES:** *Effective Date:* This rule is effective on August 19, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R02–OAR–2010–1025. All documents in the docket are listed at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., 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 Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212–637–4249.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Fradkin ([fradkin.kenneth@epa.gov](mailto:fradkin.kenneth@epa.gov)), Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This section provides additional information by addressing the following questions:

- I. What action is EPA taking?
- II. What comments did EPA receive in response to the proposal?
- III. What are EPA’s conclusions?
- IV. Statutory and Executive Order Reviews

**I. What action is EPA taking?**

EPA is taking final action to disapprove portions of the submissions from the State of New Jersey and the State of New York that were submitted to demonstrate that those states have adequately addressed elements of CAA section 110(a)(2)(D)(i)(I). Those elements require a state’s SIP to contain