health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295; 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–387 to read as follows:

§ 165.T11–387 Safety Zone; Lake Mead Intake Construction; Lake Mead, Boulder City, NV

(a) *Location.* The limits of the safety zone will include the navigable waters of Lake Mead within a 1300 foot radius of the construction vessels working on Lake Mead Intake #3, located at approximately 36°05′24″ N, 114°45′60″ W.

(b) *Enforcement Period.* This section will be in effect from January 1, 2011 through June 30, 2011. The safety zone will only be enforced during blasting operations. Blasting operations will occur weekly at 8 a.m. and 11 a.m., Mondays through Thursdays, and at 8 a.m. on Fridays. The Coast Guard will publish a Local Notice to Mariners before the rule takes effect. The construction crew will notify the public via Broadcast Notice to Mariners at least one hour prior to commencement of each blasting operation. In the event additional blasts are required due to the needs of the construction company, the public will be notified as soon as practicable, but in no event less than one hour prior to blasting. If blasting concludes prior to the scheduled termination time, the COTP will cease enforcement of this safety zone and a Broadcast Notice to Mariners will be issued to notify the public that enforcement has ended.

(c) *Definitions.* The following definitions apply to this section:

(1) *Designated representative* means Commissioned, Warrant, or Petty Officers of the Coast Guard, Coast Guard Auxiliary, or local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the COTP.

(2) *Unauthorized personnel and vessels,* means any civilian boats, fishermen, divers, and swimmers.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the COTP San Diego or his designated representative.

(2) Unauthorized personnel and vessels wishing to transit through the safety zone may request authorization to do so from the COTP San Diego or his designated representative using VHF–FM Channel 16, or telephone number (619) 278–7033.

(3) Vessels involved in construction operations are allowed within the confines of the established safety zone.

(4) All persons and vessels shall comply with the instructions of the Coast Guard COTP or his designated representative.

(5) Upon being hailed by U.S. Coast Guard or other official personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(6) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: December 29, 2010.

P.J. Hill,

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

[FR Doc. 2011–692 Filed 1–13–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2010–0107; FRL–9253–3]

Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan for Jefferson County, KY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing a federal implementation plan (FIP) to apply in Jefferson County, Kentucky because the

Louisville Metro Air Pollution Control District (LMAPCD), through the Commonwealth of Kentucky, has not submitted by its established deadline of January 1, 2011, a state implementation plan (SIP) revision to apply their Clean Air Act (CAA or Act) Prevention of Significant Deterioration (PSD) program to sources of greenhouse gases (GHGs). This action will ensure that a permitting authority—EPA—is available in Jefferson County, Kentucky to issue preconstruction PSD permits to GHG-emitting sources. This action is related to EPA's recent final rule, the GHG PSD SIP Call, published on December 13, 2010, in which EPA made a finding of substantial inadequacy and issued a SIP call to LMAPCD because the SIP for Jefferson County does not apply the PSD program to GHG-emitting sources.

DATES: This action is effective on January 14, 2011.

ADDRESSES: EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2010–0107. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Vetter, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–4391; *fax number:* (919) 541–5509; *e-mail address: vetter.cheryl@epa.gov*. For more information on the LMAPCD or Jefferson County, Kentucky, contact Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Benjamin's telephone number is (404) 562–9040; e-mail address: *benjamin.lynorae@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The entity affected by this rule is the LMAPCD, which is the local permitting authority [1] that has jurisdiction in Jefferson County, Kentucky. The LMAPCD was identified by EPA as not having submitted a SIP revision that would apply PSD requirements to GHG-emitting sources by its SIP submittal deadline of January 1, 2011. In the GHG PSD SIP call,[2] EPA determined that the Jefferson County portion of the Kentucky SIP is substantially inadequate to achieve CAA requirements because its PSD programs do not apply to GHG-emitting sources. EPA established the deadline after the LMAPCD indicated that it would not object to a deadline of January 1, 2011.

Entities potentially affected by this rule also include sources in all industry groups, which have a direct obligation under the CAA to obtain a PSD permit for GHGs for projects that meet the applicability thresholds set forth in the Tailoring Rule.[3] This independent obligation on sources is specific to PSD and derives from CAA section 165(a). Any source that is subject to a state PSD air permitting regulation not structured to apply to GHG-emitting sources will rely on this rule to obtain a permit that contains emission limitations that conform to requirements under CAA section 165(a). The majority of entities potentially affected by this action are expected to be in the following groups:

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

[a] North American Industry Classification System.

[1] For convenience, we refer to "states" in this rulemaking to collectively mean states and local permitting authorities.

[2] 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).

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

B. How is the preamble organized?

The information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. How is the preamble organized?
II. Overview of Rulemaking
III. Final Action and Response to Comments
A Authority To Promulgate a FIP
B. Timing of GHG PSD FIP
C. Substance of GHG PSD FIP
D. Period for GHG PSD FIP To Remain in Place
E. Primacy of SIP Process
IV. Statutory and Executive Order Reviews
A. Executive Order 12866—Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132—Federalism
F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Determination Under Section 307(d)
L. Congressional Review Act
V. Judicial Review
VI. Statutory Authority

II. Overview of Rulemaking

In this rulemaking, EPA is establishing a FIP, which we call the GHG PSD FIP, or simply, the FIP, to apply in Jefferson County, Kentucky because the LMAPCD did not submit by January 1, 2011, a corrective SIP revision to apply their CAA PSD program to sources of GHGs in Jefferson County, Kentucky.[4] This is the deadline EPA established after the LMAPCD indicated that it would not object to it, to ensure that a permitting authority would be in place soon after January 2, 2011, to facilitate issuance of PSD permits for construction and modification of sources. This action does not relate to the rest of Kentucky, as the Commonwealth, through the Kentucky Energy and Environment Cabinet (KEEC), submitted a corrective SIP revision to address the remainder of Kentucky on December 13, 2010. This SIP revision was approved by EPA on December 29, 2010 (75 FR 81868).

This preamble should be read in conjunction with the preamble for the proposed rulemaking for this action, which we call the GHG PSD FIP proposal or the FIP proposal;[5] and the SIP Call rulemaking that is associated with this rulemaking, including (i) the proposed SIP Call rulemaking, which we call the GHG PSD SIP Call proposal or the SIP Call proposal, and which accompanied the FIP proposal;[6] (ii) the final SIP Call rulemaking, which we call the GHG PSD SIP Call or the SIP Call; and (iii) the GHG PSD FIP final rule which covers seven states other than Jefferson County, Kentucky.[7] Background information for this rulemaking is found in those rulemakings and in the rulemakings referenced therein and will not be reiterated here.

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

On December 1, 2010, EPA promulgated the GHG PSD SIP Call, and EPA published it by notice dated December 13, 2010.[8] In the SIP call, EPA finalized its finding that the SIPs of 13 states (comprising 15 state and local programs) are substantially inadequate to meet CAA requirements because they do not apply PSD requirements to GHG-emitting sources. In addition, EPA finalized a SIP Call for each of these states, which required the state to revise its SIP as necessary to correct such inadequacies. Further, EPA established a deadline for each state to submit its corrective SIP revision. These deadlines, which differed among the states, ranged from December 22, 2010, to December 1, 2011. The LMAPCD requested a SIP deadline of January 1, 2011.

In a separate notice, EPA is also issuing a finding under CAA section 110(c)(1)(A) that the LMAPCD "failed to make [the] required submission" of the corrective SIP call-mandated SIP revision for Jefferson County, Kentucky by its January 1, 2011 deadline. EPA notified the LMAPCD of the finding by letter. That letter is located in the docket for this rulemaking.

III. Final Action and Response to Comments

A. Authority To Promulgate a FIP

In this rulemaking, EPA is finalizing the GHG PSD FIP as proposed for Jefferson County, Kentucky. This rulemaking does not relate to the remainder of the Commonwealth as EPA has already taken final action to approve the Commonwealth's corrective SIP for all areas in Kentucky except for Jefferson County. *See* 75 FR 81868.

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

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

As noted earlier in this preamble, EPA is issuing a finding that the LMAPCD, through the Commonwealth of Kentucky, "failed to make [the] required submission" of the corrective SIP Call-mandated SIP revision by its January 1, 2011, deadline. Accordingly, under CAA section 110(c)(1), EPA is required to promulgate a FIP for Jefferson County, Kentucky. It should be noted that EPA specifically proposed the FIP for Jefferson County, Kentucky.

We reiterate that the LMAPCD indicated to EPA that it preferred that EPA promulgate a FIP to take effect soon after January 2, 2011—when sources in the state become subject to PSD—rather than wait to promulgate a FIP until a later time. This is because the LMAPCD wishes to assure that a permitting authority for GHG-emitting sources is in place in Jefferson County, Kentucky should a permit be sought that requires consideration of GHGs. The LMAPCD

[4] The Louisville Metro Air Pollution Control District is the local agency that has jurisdiction over sources in Jefferson County, Kentucky.

[5] 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).

[6] Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Proposed rule, 75 FR 53892 (September 2, 2010).

[7] 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).

[8] 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).

made this choice by indicating that they did not object to EPA establishing a SIP submittal date of January 1, 2011, when EPA made clear in the proposed SIP Call and FIP that if the state did not submit the required SIP revision by that date, then EPA would promulgate the FIP the next day. 75 FR at 53904/2 (proposed SIP Call); *id.* at 53889/2 (proposed FIP). Although the LMAPCD requested a later SIP deadline than the earliest date (*i.e.,* December 22, 2010), they believe that this will only mean a short delay in the availability of a permitting authority for GHG-emitting sources in their state, and that delay will not adversely affect their sources.

In this rulemaking, EPA is not taking final action to promulgate a FIP for any of the other states beside Jefferson County, Kentucky which EPA included in the FIP proposal. This is because each of the other states falls into one of the following three categories: (1) EPA did not finalize the SIP call for this state; (2) EPA has already issued a FIP for this state; [9] or (3) EPA did finalize the SIP call but established a SIP submittal deadline that has not yet arrived. As EPA noted in the GHG FIP signed on December 23, 2010, it continues to be EPA's intent that if any of these other states does not submit the required SIP revision by its deadline, then EPA will immediately issue a finding of failure to submit a required SIP submission and immediately promulgate a GHG PSD FIP for that state.

In comments received, some commenters stated, "Remarkably, EPA states that it will also directly promulgate a SIP call and FIP for any states it has inadvertently omitted from its notice of proposed rulemaking." Although the commenters do not elaborate upon this statement, they seem to imply that it would be improper for EPA to finalize a FIP for such states because we did not provide adequate notice and opportunity for comment.

This comment is not relevant to Jefferson County, Kentucky, as the proposed SIP call and FIP explicitly name Jefferson County as an area that may be included in the final SIP Call and FIP. Furthermore, we disagree with the commenters, and have discussed and responded to this comment in great detail in the SIP Call, 75 FR at 77715–16, and the December 30, 2010 FIP, 75 FR 82248.

B. Timing of GHG PSD FIP

In the GHG PSD FIP proposal, we stated:

> If any of the states for which we issue the SIP Call does not meet its SIP submittal deadline, we will immediately issue a finding of failure to submit a required SIP submission, under CAA section 110(c)(1)(A), and immediately thereafter promulgate a FIP for the state. This timing for FIP promulgation is authorized under CAA section 110(c)(1), which authorizes us to promulgate a FIP "at any time within 2 years after" finding a failure to submit a required SIP submission. We intend to take these actions immediately in order to minimize any period of time during which larger-emitting sources may be under an obligation to obtain PSD permits for their GHGs when they construct or modify, but no permitting authority is authorized to issue those permits.

75 FR at 53,889/2.

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

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

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

EPA disagrees with these comments. As we stated in the proposed rule, CAA section 110(c)(1)(A) authorizes EPA to promulgate a FIP "at any time within 2 years after" finding a failure to submit a required SIP revision. As we did in the seven-state FIP issued on December 30, 2010, here we are promulgating the FIP immediately because we wish to minimize any disruption in permitting for the larger GHG-emitting sources and we are doing so after consultation with the affected state. The LMAPCD told EPA that they would not object to the promulgation of a FIP at the earliest possible date after January 1, 2011. Without the FIP, Jefferson County, Kentucky would be without an approved program to issue PSD permits for GHG-emitting sources until the LMAPCD, through the Commonwealth of Kentucky, submits, and EPA approves, a SIP revision. The FIP provides sources in Jefferson County, Kentucky with an immediate mechanism to obtain required permits for construction and modification until the revised SIP is approved.

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

Instead, what is important is that for each of the 13 states for which EPA specifically proposed the FIP, which were the same as the ones for which EPA proposed the SIP Call, the public had adequate notice of the circumstances under which EPA proposed that the state would become subject to the FIP. Those circumstances were that if EPA finalized the SIP Call, as proposed, for the state, and if the state did not submit a SIP revision

[9] On December 30, 2010, EPA published a notice to promulgate a FIP for seven states that received a SIP submittal deadline of December 22, 2010. Based on information received from each of these states during the public comment period, they indicated that they would not object to this early deadline for allowing a FIP to be put in place. These seven states are: (1) Arizona: Both Pinal County and Rest of State (excluding Maricopa County, Pima County, and Indian Country); (2) Arkansas; (3) Florida; (4) Idaho; (5) Kansas; (6) Oregon; and (7) Wyoming.

applying its PSD program to GHG-emitting sources by the deadline, EPA would establish a FIP for that state. In fact, EPA did finalize the SIP call for all but one of those 13 states and is now finalizing the FIP for Jefferson County, Kentucky. Further, EPA received comments on the proposed FIP from several states and/or industries located in states for which EPA proposed the FIP, which indicates that the FIP proposal provided adequate notice. *See, e.g.,* comments identified in the rulemaking docket as document numbers 0084.1 (Texas), 0055.1 (Arkansas), 0066.1 (Texas Industry Project), and 0109.1 (National Mining Association).

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

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

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

Several commenters raised an additional objection, which was that in their view, EPA failed to comply with the requirements of CAA section 307(d)(3) that (i) the proposed FIP include a summary of "the factual data on which the proposed rule is based" and "the major legal interpretations and policy considerations underlying the proposed rule"; and (ii) "[a]ll data, information, and documents * * * on which the proposed rule relies shall be included in the docket *on the date of publication of the proposed rule.*" (Emphasis added by one of these commenters.) One of these commenters explained that (a) in the SIP Call proposal, EPA had made a detailed request that states provide information as to whether their state law authorized the application of PSD to GHG-emitting sources; (b) this detailed request demonstrated that the proposal did not establish the legal basis for the SIP Call; and (c) as a result, the FIP proposal did not include "information that is essential to determining *whether* a FIP for a given state is even appropriate and justified." (Emphasis in original.) This commenter added—

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

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

It is true that for any state, whether and when EPA would finalize the FIP for any state depended on other factors, including whether EPA would finalize the SIP Call for that state, what deadline EPA would establish, and whether the state would submit its required corrective SIP revision by that deadline. But the FIP proposal put the public on notice, with sufficient specificity, as to EPA's plan. In any event, any FIP is necessarily dependent on other factors, including state actions, including submission of a revised SIP. Most broadly, commenters' approach—which is that EPA cannot propose a FIP in concert with a SIP call, but instead must proceed *in seriatim* by completing the SIP call first and then proposing the FIP—would result in lengthy delays in the establishment of a permitting authority to process GHG-emitting sources' PSD permit applications. As a result, commenters' approach could well cause delays in these sources' ability to undertake construction and modification projects.

We included related comments and responses in the Response to Comments document for the seven-state FIP issued on December 30, 2010,[10] which is applicable to this rule as well.

C. Substance of GHG PSD FIP

In the FIP proposal, we stated:

> The proposed FIP constitutes the EPA regulations found in 40 CFR 52.21, including the PSD applicability provisions, with a limitation to assure that, strictly for purposes of this rulemaking, the FIP applies only to GHGs. Under the PSD applicability provisions in 40 CFR 52.21(b)(50), the PSD program applies to sources that emit the requisite amounts of any "regulated NSR pollutant[s]," including any air pollutant "subject to regulation." However, in states for which EPA would promulgate a FIP to apply PSD to GHG-emitting pollutants, the approved SIP already applies PSD to other air pollutants. To appropriately limit the scope of the FIP, EPA proposes in this action to amend 40 CFR 52.21(b)(50) to limit the applicability provision to GHGs.
>
> We propose this FIP because it would, to the greatest extent possible, mirror EPA regulations (as well as those of most of the states). In addition, this FIP would readily incorporate the phase-in approach for PSD applicability to GHG sources that EPA has developed in the Tailoring Rule and expects to develop further through additional rulemaking. As explained in the Tailoring Rule, incorporating this phase-in approach—including Steps 1 and 2 of the phase-in as promulgated in the Tailoring Rule—can be most readily accomplished through interpretation of the terms in the definition "regulated NSR pollutant," including the term "subject to regulation."
>
> In accordance with the Tailoring Rule, * * * the FIP would apply in Step 1 of the phase-in approach only to "anyway sources" (that is, sources undertaking construction or modification projects that are required to apply for PSD permits anyway due to their non-GHG emissions and that emit GHGs in the amount of at least 75,000 tpy on a CO_2e basis) and would apply in Step 2 of the phase-in approach to both "anyway sources" and sources that meet the 100,000/75,000-tpy threshold (that is, (i) sources that newly construct and would not be subject to PSD on account of their non-GHG emissions, but that emit GHGs in the amount of at least 100,000 tpy CO_2e, and (ii) existing sources that emit GHGs in the amount of at least 100,000 tpy CO_2e, that undertake modifications that would not trigger PSD on

[10] The Response to Comments document for the seven-state FIP can be found in the docket for this rulemaking at EPA–HQ–OAR–2010–0107–0157.

the basis of their non-GHG emissions, but that increase GHGs by at least 75,000 tpy CO_2e).

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

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

75 FR 53889/3 to 53,890/1

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

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

We appreciate the commenters' concern. We well recognize that dividing permitting responsibilities between two authorities—EPA for GHGs and the state for all other pollutants—will require close coordination between the two authorities to avoid duplication, conflicting determinations, and delays. We note that this situation is not without precedent. In many instances in the past, EPA has been the PSD permitting authority but the state has accepted a delegation for parts of the PSD program, so that a source has had to go to both the state and EPA for its permit. In addition, all nonattainment areas in the nation are in attainment or are unclassifiable for at least one pollutant, so that every nonattainment area is also a PSD area. In some of these areas, the state is the permitting authority for nonattainment new source review (NSR) and EPA is the permitting authority for PSD. As a result, there are instances in which a new or modifying source in such an area has needed a nonattainment NSR permit from the state and a PSD permit from EPA.

EPA is working expeditiously to develop recommended approaches for EPA regions and affected states—including Jefferson County, Kentucky—to use in addressing the shared responsibility of issuing PSD permits for GHG-emitting sources. In addition, as discussed below, we intend for the GHG PSD FIP to remain in place only as long as necessary for states' SIPs to be approved. Moreover, in this interim period, we intend to delegate permitting responsibility to those states that are able to implement it and that request it. States that request and receive a delegation will be responsible for issuing both the GHG part and the non-GHG part of the permit, and that will moot commenters' concerns about split permitting.

D. Period for GHG PSD FIP To Remain in Place

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

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

75 FR 53889/2–3.

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

E. Primacy of SIP Process

In the FIP proposal we stated,

> This proposal [to promulgate a FIP] is secondary to our overarching goal, which is to assure that in every instance, it will be the state that will be that permitting authority. EPA continues to recognize that the states are best suited to the task of permitting because they and their sources have experience working together in the state PSD program to process permit applications. EPA seeks to remain solely in its primary role of providing guidance and acting as a resource for the states as they make the various required permitting decisions for GHG emissions.
>
> Accordingly, beginning immediately we intend to work closely with the states—as we have already begun to do since earlier in the year—to help them promptly develop and submit to us their corrective SIP revisions that extend their PSD program to GHG-emitting sources. Moreover, we intend to promptly act on their SIP submittals. Again, EPA's goal is to have each and every affected state have in place the necessary permitting authorities by the time businesses seeking construction permits need to have their applications processed and the permits issued—and to achieve that outcome by means of engaging with the states directly through a concerted process of consultation and support.
>
> EPA is taking up the additional task of proposing this FIP and the companion SIP Call action only because the Agency believes it is compelled to do so by the need to assure businesses, to the maximum extent possible and as promptly as possible, that a permitting authority is available to process PSD permit applications for GHG-emitting sources once they become subject to PSD requirements on January 2, 2011.
>
> In order to provide that assurance, we are obligated to recognize, as both states and the regulated community already do, that there may be circumstances in which states are simply unable to develop and submit those SIP revisions by January 2, 2011, or for some period of time beyond that date. As a result, absent further action by EPA, those states' affected sources confront the risk that they may have to put on hold their plans to construct or modify, a risk that may have adverse consequences for the economy.
>
> Given these exigent circumstances, EPA proposes this plan, within the limits of our power, with the intent to make a back-up permitting authority available—and to send a signal of assurance expeditiously in order to reduce uncertainty and thus facilitate businesses' planning. Within the design of the CAA, it is EPA that must fill that role of back-up permitting authority. This FIP and the companion SIP Call action fulfill the CAA requirements to establish EPA in that role.
>
> At the same time, we propose these actions with the intent that states retain as much discretion as possible in the hand of the states. In the SIP Call rulemaking, EPA proposes that states may choose the deadline they consider reasonable for submission of

their corrective SIP revision. If, under CAA requirements, we are compelled to promulgate a FIP, we invite the affected state to accept a delegation of authority to implement that FIP, so that it will still be the state that processes the permit applications, albeit operating under federal law. In addition, if we are compelled to issue a FIP, we intend to continue to work closely with the state to assist in developing and submitting for approval its corrective SIP revision, so as to minimize the amount of time that the FIP must remain in place.

75 FR at 53890/1–2.

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

IV. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

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

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

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

D. Unfunded Mandates Reform Act

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

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

E. Executive Order 13132—Federalism

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

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comment on the proposal for this action from state and local officials.

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

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

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

EPA interprets EO 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 EO has the potential to influence the regulation. This action is not subject to EO 13045 because it merely prescribes EPA's action for an area that did not meet its existing obligation for PSD SIP submittal.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards

bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

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

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

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

K. Determination Under Section 307(d)

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

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action does not constitute a "major rule" as defined by 5 U.S.C. 804(2). Therefore, this action will be effective January 14, 2011.

V. Judicial Review

Section 307(b)(1) of the CAA specifies which Federal Courts of Appeal have jurisdiction to hear petitions for review of which final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

This rule is nationally applicable under CAA section 307(b)(1). It is merely the next step in the suite of rules addressing inadequacies in SIPs related to 13 states' failure to apply PSD to GHG-emitting sources as the SIP Call, the Finding of Failure to Submit issued on December 29, 2010, and the FIP rule issued on December 30, 2010. In particular, this rule simply follows-up on the FIP rule issued on December 30, 2010, which affected seven states that chose the earliest possible deadline, and takes the identical next step for Jefferson County now that this area, too, has missed its SIP Call deadline and is subject to a Finding of Failure to Submit, and FIP. The circumstances that have led to this rulemaking are national in scope and are substantially the same for Jefferson County, Kentucky as they were for each of the seven affected states in the earlier FIP rule issued on December 30, 2010. They include EPA's promulgation of nationally applicable GHG requirements that, in conjunction with the operation of the CAA PSD provisions, have resulted in GHG-emitting sources becoming subject to PSD; as well as EPA's finding of substantial SIP inadequacy, imposition of a SIP call, and establishment of a deadline for SIP submittal. Moreover, in this rule, EPA is applying the same uniform principles for promulgating the FIP for Jefferson County, Kentucky as it did for each of the seven earlier-affected states, concerning, e.g., timing (that is, that EPA is promulgating the FIP for each affected state immediately) and scope (that is, that EPA is applying the FIP for GHG-emitting sources). The FIP for Jefferson County has substantially the same, if not identical, terms as the FIP for each affected state in the December 30, 2010 rule. This rulemaking action is supported by the same single administrative record as the earlier December 30, 2010 FIP rule, and does not involve factual questions unique to Jefferson County, Kentucky or the LMAPCD. In addition, as stated above, this rule is part of a single approach to correcting certain inadequacies in SIPs in multiple States across the country, and in several judicial circuits.

For similar reasons, this rule is based on determinations of nationwide scope or effect. For Jefferson County, Kentucky, EPA is determining that it is appropriate to promulgate the FIP immediately and to apply it to GHG-emitting sources, but not other sources, in the same way it made the same determination for the seven other states in the earlier December 30, 2010 FIP rule. These determinations are the same for each of the states. The provisions of this FIP are also substantially the same, if not identical, to those for the seven earlier affected states. Moreover, EPA is making these determinations and promulgating this action within the context of nationwide rulemakings and interpretation of the applicable CAA provisions, as noted above.

Thus, under section 307(b)(1) of the Act, judicial review of this final action is available by filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 15, 2011. Any such judicial review is limited to only those objections that were raised with reasonable specificity in timely comments. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

VI. Statutory Authority

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

List of Subjects in 40 CFR Part 52

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

hexafluoride, Sulfur oxides, Volatile organic compounds.

Dated: January 10, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is revised as follows:

PART 52—[AMENDED]

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

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

■ 2. Section 52.37 is amended by revising paragraph (b)(6) and adding paragraph (b)(7) to read as follows:

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

* * * * *

(b) * * *

(6) Wyoming;

(7) Jefferson County, Kentucky.

* * * * *

[FR Doc. 2011–768 Filed 1–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

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

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction and clarification.

SUMMARY: EPA is publishing today's notice to correct the regulatory table in the Code of Federal Regulations for Mississippi's state implementation plan (SIP) to clarify that the version of Mississippi's Prevention of Significant Deterioration (PSD) regulations incorporated into Mississippi's SIP on and after the January 19, 2011, effective date of the SIP revision approved by EPA on December 20, 2010, will be the version promulgated by the State on October 28, 2010 (state-effective date December 1, 2010), and approved by EPA on December 29, 2010. This version of Mississippi's PSD regulations includes both a SIP revision approved by EPA on December 20, 2010, and a SIP revision approved by EPA on December 29, 2010. No new SIP revisions are approved by today's notice. Today's notice clarifies that the revision identified in EPA's December 20, 2010, final action (adding nitrogen oxides (NO_X) as a precursor to ozone for PSD purposes) was included in the PSD rules that were incorporated into the SIP by EPA's December 29, 2010, final action regarding greenhouse gases (GHGs).

DATES: This action is effective January 19, 2011.

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

FOR FURTHER INFORMATION CONTACT: Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Benjamin can be reached at 404–562–9040, or via electronic mail at *benjamin.lynorae@epa.gov.*

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

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

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