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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2011-0032; FRL-9613-3]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a revision to the Albuquerque/Bernalillo County, New Mexico State Implementation Plan (SIP) that was submitted by the Governor of New Mexico to EPA on December 15, 2010. This SIP revision modifies Albuquerque/Bernalillo County's Prevention of Significant Deterioration (PSD) program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Albuquerque/Bernalillo County's PSD permitting requirements for their greenhouse gas (GHG) emissions. EPA is fully approving the Albuquerque/Bernalillo County, New Mexico December 15, 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 [insert date 30 days from date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2011-0032. 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 the disclosure of which 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 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. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

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

Albuquerque Environmental Health Department, Suite 3023, 3rd floor, One Civic Plaza,
400 Marquette Avenue NW, Albuquerque, New Mexico, 87102.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's final rule, please contact Mr. Mike Miller (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-7550. Mr. Miller can also be reached via electronic mail at miller.michael@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA. This supplementary information section is arranged as follows:

- I. What Is the Background for This Action?
- II. What Final Action is EPA Taking?
- III. Statutory and Executive Order Reviews

I. What is the Background for This Action?

The background for EPA's national actions pertaining to GHG's as well as today's action is discussed in detail in our September 26, 2011 proposal (76 FR 59334). The comment period was open for thirty days and no comments were received.

II. What Final Action is EPA Taking?

We are fully approving Albuquerque/Bernalillo County's December 15, 2010, SIP submittal, relating to PSD requirements for GHG-emitting sources in Albuquerque/Bernalillo County. Specifically, the SIP revision establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. We are approving this SIP revision 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 Albuquerque/Bernalillo County December 15, 2010, SIP revision, 76 FR 59334 (September 26, 2011), since we are approving Albuquerque/Bernalillo County's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into its SIP, then paragraph (e) in Section 52.1634 of 40 CFR part 52, as included in EPA's SIP Narrowing Rule – which codifies EPA's limiting its approval of Albuquerque/Bernalillo County's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds – is no longer necessary. In today's action, we are also amending Section 52.1634 of 40 CFR part 52 to remove this unnecessary regulatory language.

III. 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 Clean Air 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 (Public Law 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 **[Insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed 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: December 14, 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. The second table in § 52.1620(c) entitled “EPA Approved Albuquerque/Bernalillo County, NM Regulations” is amended by revising the entry for “Part 61 (20.11.61), Prevention of Significant Deterioration,” to read as follows:

§ 52.1620 Identification of plan.

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(c) * * *

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EPA Approved Albuquerque/Bernalillo County, NM Regulations

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
* * * * *				
New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board				
* * * * *				
Part 61 (20.11.61)	Prevention of Significant Deterioration	1/10/2011	[Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins]	Only sections 20.11.61.6, 20.11.61.7, 20.11.61.11, 20.11.61.12, 20.11.61.20, and 20.11.61.27 of Part 61 are approved as of [Insert date of <u>FR</u> publication] . The remainder of Part 61 remains unchanged from EPA’s approval of April 26, 2007 (72 FR 20728).
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§ 52.1634 - [Amended]

3. Section 52.1634 is amended by removing paragraphs (d) and (e).

[FR Doc. 2011-33280 Filed 12/28/2011 at 8:45 am; Publication Date: 12/29/2011]