



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2012-0639; FRL-9795-4]**

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

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is taking final action to approve two revisions to the Arkansas State Implementation Plan (SIP) submitted by the Arkansas Department of Environmental Quality (ADEQ) to EPA on February 17, 2010, and November 6, 2012. The February 17, 2010, SIP revision to the Arkansas New Source Review (NSR) Prevention of Significant Deterioration (PSD) program updates the Arkansas SIP to incorporate by reference (IBR) requirements for the federal PSD permitting program under EPA's November 29, 2005 Phase 2 8-hour Ozone Implementation rule. The November 6, 2012, SIP revision to the Arkansas NSR PSD program provides the state of Arkansas with the authority to issue PSD permits governing greenhouse gas (GHG) emissions and establishes appropriate emission thresholds for determining which new stationary sources and modifications to existing stationary sources become subject to Arkansas's PSD permitting requirements for their GHG emissions. The November 6, 2012 SIP revision also defers until July 21, 2014, application of the PSD permitting requirements to biogenic carbon dioxide emissions from bioenergy and other biogenic stationary sources. EPA is approving the February 17, 2010, and November 6, 2012, SIP revisions to the Arkansas NSR PSD permitting program as consistent with federal requirements for PSD permitting. As a result of this approval,

EPA is rescinding the GHG PSD Federal Implementation Plan (FIP) for Arkansas that was put in place on December 30, 2010, to ensure the availability of a permitting authority for GHG permitting in Arkansas. EPA is finalizing this action under section 110 and part C of the Act.

**DATES:** This final rule will be effective **[insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2012-0639. 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., Confidential Business Information 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 Permits Section (6PD-R), 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 submittals related to this SIP revision, and which are part of the EPA docket, are also available for public inspection at the Local Air Agency listed below during official business hours by appointment:

Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Miller (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) 665-7550. Mr. Miller can also be reached via electronic mail at [miller.michael@epa.gov](mailto:miller.michael@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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## **I. What Is the Background for This Action?**

The background for today’s final rule and the EPA’s national actions pertaining to GHGs is discussed in detail in our January 11, 2013 proposal (see 78 FR 2354). The comment period was open for thirty days and no comments were received.

## **II. What Final Action is EPA Taking?**

We are approving Arkansas’s February 17, 2010 SIP submittal, which updates the Arkansas SIP to incorporate by reference (IBR) requirements for the federal PSD permitting program under EPA’s November 29, 2005 Phase 2 8-hour Ozone Implementation rule.

We are also approving Arkansas's November 6, 2012, SIP submittal, relating to PSD permitting requirements for GHG-emitting sources in Arkansas. Specifically, the SIP revision provides the state of Arkansas with the authority to issue PSD permits governing greenhouse gas (GHG) emissions and establishes appropriate emission thresholds for determining which new stationary sources and modifications to existing stationary sources become subject to Arkansas's PSD permitting requirements for their GHG emissions. The November 6, 2012, SIP revision also defers until July 21, 2014, application of the PSD permitting requirements to biogenic carbon dioxide emissions from bioenergy and other biogenic stationary sources.

EPA has made the determination that the February 17, 2010, and November 6, 2012, revisions to the Arkansas SIP for PSD permitting are approvable because the revisions were adopted and submitted as SIP revisions in accordance with the CAA and EPA regulations regarding PSD permitting for 8-hour ozone and GHGs. We are taking this final action today under section 110 and part C of the Act.

As explained in our January 11, 2013 proposal (see 78 FR 2354), as a result of today's action we are also rescinding the GHG PSD FIP for Arkansas at 40 CFR 52.37(b)(2). Therefore, as of the effective date of this final rule, the EPA will no longer be the PSD permitting authority for GHG-emitting sources in Arkansas.

### **III. Statutory and Executive Order Reviews.**

#### *A. Executive Order 12866 – Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a "significant regulatory action" under the terms of Executive Order

12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

*B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. because this SIP approval and FIP rescission under section 110 and part C of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply transfers the permitting authority from EPA to the State. Burden is defined at 5 CFR 1320.3(b). Because this final action does not impose an information collection burden, the Paperwork Reduction Act does not apply.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule will transfer the permitting responsibility of GHG emissions from EPA to the State of Arkansas. This final rule will lead to permitting requirements for certain sources of GHG emissions; however these sources are large emitters of GHGs and tend to be large sources. Further, this rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and part C of the Clean Air Act do not create any new requirements but simply approve requirements that the States are already imposing. 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 sector. This action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the 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 transfers permitting responsibility of GHG emissions from EPA to the State of Arkansas. Small governments are not impacted.

*E. Executive Order 13132 - Federalism*

This action does not have federalism implications. It will not have substantial direct

effects on Arkansas, on the relationship between the national government and the State of Arkansas, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA specifies conditions under which states may request, and EPA may approve state implementation of CAA requirements. This rulemaking approves PSD permitting provisions in the state of Arkansas for GHG emissions, and as a consequence of the SIP approval, simultaneously rescinds federal PSD permitting responsibility for GHG emissions in Arkansas. This rulemaking is pursuant to the SIP approval and requirements of the CAA. As such, this final rule does not change the balance of power between Arkansas and EPA as provided for in the CAA. 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 proposed action from State and local officials. EPA received no comments from state or local governments on this rulemaking.

*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). In this action, EPA is not addressing any Tribal Implementation Plans. This action is limited to Arkansas's PSD SIP. 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 EPA is approving revisions to the Arkansas PSD SIP for permitting of GHG emissions, as authorized by the CAA.

*H. Executive Order 13211 – Actions Concerning Regulations 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.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 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 action does not involved 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 (EO) 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 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 increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This rule requires the State of Arkansas to assume the responsibility for permitting GHG emissions subject to PSD requirements. This final rule approves the Arkansas SIP as meeting Federal requirements for GHG PSD permitting and imposes no additional requirements beyond those imposed by Arkansas law.

*K. 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 action and other required information to the U.S. Senate, the

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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).

*L. Petitions for Judicial Review*

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 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, Reporting and recordkeeping requirements.

Dated: March 22, 2013.

Bob Perciasepe,  
Acting Administrator.

40 CFR part 52 is amended as follows:

**PART 52 – [AMENDED]**

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

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

**Subpart A – General Provisions**

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

**Subpart E – Arkansas**

3. Section 52.170(c) is amended by revising the entries for Sections 19.902, 19.903, and 19.904 under the first table titled “EPA-Approved Regulations in the Arkansas SIP”.

The revisions read as follows:

**§ 52.170 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-Approved Regulations in the Arkansas SIP**

State citation	Title/subject	State submittal/ effective date	EPA approval date	Explanation
Regulation No. 19: Regulations of the Arkansas Plan of Implementation for Air Pollution Control				
* * * * *				
Chapter 9: Prevention of Significant Deterioration				
* * * * *				
Reg 19.902	Purposes	1/25/2009	[Insert date of FR publication] [Insert FR page number where document begins]	
Reg 19.903	Definitions	1/25/2009	[Insert date of	

			<b>FR publication] [Insert FR page number where document begins]</b>	
Reg 19.904	Adoption of Regulations	11/18/2012	<b>[Insert date of FR publication] [Insert FR page number where document begins]</b>	
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