

The EPA Assistant Administrator for Air, Gina McCarthy, signed the following final rule on 01/10/2011, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDSys website (<http://fdsys.gpo.gov/fdsys/search/home.action>) and on Regulations.gov (<http://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2010-0107. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2010-0107; FRL-XXXX-X]

Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure to Submit State Implementation Plan Revision Required of Louisville Metro Air Pollution Control District for Jefferson County, Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is making a finding that the Louisville Metro Air Pollution Control District (LMAPCD) has failed to submit a revision to its EPA-approved state implementation plan (SIP) for Jefferson County, Kentucky, to satisfy requirements of the Clean Air Act (CAA) to apply Prevention of Significant Deterioration (PSD) requirements to greenhouse gas (GHG)-emitting sources. By notice dated December 13, 2010, EPA issued a "SIP call" for 13 states (comprising 15 state and local programs, including

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Kentucky's LMAPCD), requiring each state to revise its SIP as necessary to correct the SIP's failure to apply PSD to such sources and establishing a SIP submittal deadline for each state. By this action, EPA is making a finding that the LMAPCD has failed to submit the required SIP revision by January 1, 2011, which is the SIP submittal deadline that EPA established in the SIP call for LMAPCD. This finding requires EPA to promulgate a federal implementation plan (FIP) for Jefferson County, Kentucky, applying PSD to GHG-emitting sources, and EPA is taking a separate action to promulgate the FIP immediately.

DATES: This action is effective on [**INSERT DATE OF PUBLICATION**].

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 www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West Building, Room

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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. Lisa Sutton, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541-3450; fax number: (919) 541-5509; e-mail address: sutton.lisa@epa.gov. For information regarding the Louisville Metro Air Pollution Control District permitting authority, 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?

Jefferson County, Kentucky, is the only entity affected by

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this rule.¹ By this action, EPA is making a finding of failure to submit the required SIP for the LMAPCD because its EPA-approved SIP PSD program does not apply to GHG-emitting sources in Jefferson County, Kentucky. This action only applies to Jefferson County, Kentucky, and does not apply to the remainder of the Commonwealth of Kentucky. On December 13, 2010, the Kentucky Division of Air Quality provided EPA with the required corrective SIP revision to address PSD requirements related to GHG-emitting sources for all other areas in Kentucky. On December 29, 2010, EPA took final action to approve the Commonwealth's December 13, 2010, SIP revision. See 75 FR 81868.

B. How is the preamble organized?

¹ In a final action published on December 29, 2010, EPA announced that the Agency made a separate finding of failure to submit for seven other states (comprising eight state and local programs) because those states failed to provide required SIP revisions to correct their EPA-approved SIP PSD programs for applicability to GHG-emitting sources by the established deadlines for those states. See 75 FR 81874. For convenience, we refer to "states" in this rulemaking to collectively mean state and local permitting authorities. The seven states addressed in EPA's December 29, 2010, rulemaking are Arizona, Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming. In Arizona, the finding applies to two EPA PSD permit programs—"Pinal County" and "Rest of State (Excludes Maricopa County, Pima County, and Indian Country)."

The information presented in this preamble is organized as follows:

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II. Background

A. CAA and Regulatory Context

EPA described the relevant background information in the **This document is a prepublication version, signed by EPA Assistant Administrator for Air, Gina McCarthy on 01/10/2011. We have taken steps to ensure the accuracy of this version, but it is not the official version.**

proposed and final rulemaking for what we call the GHG PSD SIP call or, simply, the SIP call,² as well as in what we call the Tailoring Rule.³ 75 FR at 31518-21. Knowledge of this background information is presumed and will be only briefly summarized here.

1. SIP PSD Requirements

In general, under the CAA PSD program, a stationary source must obtain a permit prior to undertaking construction or modification projects that would result in specified amounts of new or increased emissions of air pollutants that are subject to regulation under other provisions of the CAA. CAA sections 165(a)(1), 169(1). As we described in the SIP call and elsewhere, several CAA provisions, taken together, mandate that SIPs include PSD programs that are applicable to any air

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 at 77698, 77700-04 (December 13, 2010) (final SIP call); "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, 53896-98 (September 2, 2010) (proposed SIP call).

³ Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule. 75 FR 31514, 31518-21 (June 3, 2010).

pollutant that is subject to regulation under the CAA, including, as discussed later in this preamble, GHGs on and after January 2, 2011. CAA sections 110(a)(2)(C), 110(a)(2)(J), 161.

2. SIP Inadequacy and Corrective Action

The CAA provides a mechanism for the correction of SIPs with certain types of inadequacies. CAA section 110(k)(5) authorizes the Administrator to "find[] that [a SIP] * * * is substantially inadequate to * * * comply with any requirement of this Act," and, based on that finding, to "require the State to revise the [SIP] * * * to correct such inadequacies." This latter action is commonly referred to as a "SIP call." In addition, this provision provides that EPA must notify the state of the substantial inadequacy and authorizes EPA to establish a "reasonable deadline[] (not to exceed 18 months after the date of such notice)" for the submission of the corrective SIP revision.

If EPA does not receive the corrective SIP revision by the deadline, CAA section 110(c)(1)(A) authorizes EPA to "find[] that [the] State has failed to make a required submission." Once EPA makes that finding, CAA section 110(c)(1) requires EPA to "promulgate a Federal implementation plan at any time within

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2 years after the [finding] * * * unless the State corrects the deficiency, and [EPA] approves the plan or plan revision, before [EPA] promulgates such [FIP]."

B. Recent EPA Regulatory Action Concerning PSD Requirements for GHG-emitting Sources

In recent months, EPA has taken several distinct actions related to GHGs under the CAA. Some of these, in conjunction with the operation of the CAA, trigger PSD applicability for GHG-emitting sources on and after January 2, 2011, but focus the scope of PSD on the largest GHG-emitting sources. These actions include what we call the Endangerment Finding,⁴ the Light-Duty Vehicle Rule,⁵ the Johnson Memo Reconsideration,⁶ and the Tailoring Rule.

Closely related to this action, EPA promulgated the PSD GHG SIP call, under authority of CAA section 110(k)(5). In that

⁴ "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

⁵ "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

⁶ "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

action, applicable to 13 states, the Administrator issued a finding of substantial inadequacy as well as a SIP call and established a deadline for submission of the corrective SIP revision. The deadline was 12 months after the date of the SIP call, unless the state indicated to EPA that it did not object to an earlier deadline, as early as 3 weeks after the date of the SIP call. Twelve of the states so indicated and therefore received an earlier deadline. The LMAPCD requested a SIP submittal deadline of January 1, 2011. 75 FR at 77705.

All 13 states and their deadlines are listed in table II-1, "SIP Call States and SIP Submittal Deadlines":

Table II-1. SIP Call States and SIP Submittal Deadlines

State (or Area)	SIP Submittal Deadline
Arizona: Pinal County	12/22/10
Arizona: Rest of State (Excludes Maricopa County, Pima County, and Indian Country)	12/22/10
Arkansas	12/22/10
California: Sacramento Metropolitan AQMD	01/31/11
Connecticut	03/01/11
Florida	12/22/10
Idaho	12/22/10
Kansas	12/22/10
Kentucky (Jefferson County): Louisville Metro Air Pollution Control District	01/01/11
Kentucky: Rest of State (Excludes Louisville Metro Air Pollution Control District (Jefferson County))	03/31/11
Nebraska	03/01/11
Nevada: Clark County	07/01/11
Oregon	12/22/10
Texas	12/01/11

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The SIP submittal deadlines that the final SIP call rule established for the states reflect, in almost all instances, a recognition by EPA and the states of the need to move expeditiously to assure the availability of a permitting authority. In the SIP call, EPA made clear that the purpose of establishing the shorter period as the deadline—for any state that advised us that it did not object to that shorter period—is to accommodate states that wish to ensure that a FIP is in effect as a backstop to avoid any gap in PSD permitting. 75 FR at 77710.

Seven of the 13 SIP-called states (including 8 of the 15 affected PSD programs) stated that they did not object to a SIP submittal deadline of December 22, 2010 (the earliest possible deadline), 75 FR at 77705, and those states are the subject of a final rule that EPA issued on December 29, 2010. See 75 FR 81874. The LMAPCD requested a SIP submittal deadline of January 1, 2011, has since missed that SIP submittal deadline, and thus

is the subject of this final rule.⁷

Also closely related to this action, EPA proposed a FIP⁸ action related to GHGs. We stated in the proposed FIP that if any of the states for which we issued the SIP call did not meet its SIP submittal deadline, we would immediately issue a finding of failure to submit a required SIP revision, under CAA section 110(c)(1)(A), and immediately thereafter promulgate a FIP for the state. We explained that we would 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 53889. Seven of the 13 SIP-called states (including 8 of the 15 affected PSD programs) stated that they did not object to a SIP submittal deadline of December 22, 2010 (the earliest

⁷ More detailed discussion about the 13 states is included in the Supplemental Information Document prepared by EPA in support of the final SIP call. The Supplemental Information Document can be found in the docket for this rulemaking, at Document ID No. EPA-HQ-OAR-2010-0107-0129.

⁸ Proposed rule, "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan." 75 FR 53883 (September 2, 2010). The notice can be found in the docket for this rulemaking, at Document ID No. EPA-HQ-OAR-2010-0107-0045.

possible deadline). Subsequently, for those seven states, EPA made a finding of failure to submit a corrective SIP revision (75 FR at 77705; December 29, 2010) and by separate action promulgated a FIP.⁹

III. Final action: Finding of Failure of Kentucky's Louisville Metro Air Pollution Control District to Submit a Corrective SIP Revision

By this final rule, EPA is making a finding under CAA section 110(c) that Kentucky's LMAPCD has failed to submit, through the Kentucky Energy and Environment Cabinet (KEEC), a corrective SIP for Jefferson County by January 1, 2011, which was its SIP submittal deadline, as established under our SIP call. The LMAPCD is the air permitting authority that administers the Jefferson County portion of Kentucky's SIP. Although two EPA-approved PSD programs in Kentucky—"Jefferson County" and "Rest of State"—were included in EPA's recent SIP

⁹ In a final action published on December 30, 2010, EPA promulgated a FIP to apply to seven states (comprising eight state and local programs) because those states failed to provide required SIP revisions to correct their EPA-approved SIP PSD programs for applicability to GHG-emitting sources. Final rule, "Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan." 75 FR 82246.

call, this finding of failure to submit applies only to Jefferson County, Kentucky. Subsequent to EPA's SIP call, the Commonwealth of Kentucky submitted a corrective SIP revision to apply its PSD program to GHG-emitting sources in the remainder of the Commonwealth of Kentucky. On December 29, 2010, EPA took final action to approve the Commonwealth's December 13, 2010, SIP revision. See 75 FR 81868.

As we stated in our proposed FIP rulemaking (see 75 FR at 53889), if a state for which we issue the SIP call does not meet its SIP submittal deadline, we would immediately issue a finding of failure to submit a required SIP revision under CAA section 110(c)(1)(A). Once we make that finding, we are required under CAA section 110(c) to promulgate a FIP (unless first the state corrects the deficiency and EPA approves the plan or plan revision). By a separate action today, we are promulgating the FIP immediately.

The making of a finding of failure in this final rule is important because it is the prerequisite for the FIP, and the FIP, in turn, establishes EPA as the permitting authority for GHG-emitting sources. Without our acting as that authority, large GHG-emitting sources in Jefferson County, Kentucky, may be unable to obtain a PSD permit for their GHG emissions and

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therefore may face delays in undertaking construction or modification projects. Sources that emit or plan to emit large amounts of GHGs are, starting January 2, 2011, required to obtain PSD permits before undertaking new construction or modification projects, but neither the LMAPCD nor, absent the FIP, EPA would be authorized to issue the permits. With the FIP, EPA will have the authority to issue PSD permits for Jefferson County, Kentucky.

This rule is effective immediately upon publication in the Federal Register. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. 553(d), generally provides that rules may not take effect earlier than 30 days after they are published in the Federal Register. However, APA section 553(d)(3) provides an exception when the agency finds good cause exists for a rule to take effect in less than 30 days.

We find good cause exists here to make this rule effective upon publication because implementing a 30-day delayed effective date would interfere with the Agency's ability to ensure that there is a permitting authority authorized to issue the required PSD permits for GHG emissions to certain major stationary sources in Jefferson County, Kentucky. A 30-day delay in the effective date of this rule will impede implementation of this

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rule and create regulatory confusion. This rule, establishing that the LMAPCD has failed to submit a corrective SIP revision by its January 1, 2011, deadline, is necessary so that EPA can promulgate a FIP for Jefferson County, Kentucky, soon afterward. This timing will allow the FIP to be published and become effective as soon as possible after the January 2, 2011, date that PSD began to apply to GHG-emitting sources under the CAA. As of January 2, 2011, certain major stationary sources in Jefferson County, Kentucky, if seeking PSD permits for other pollutants, are already required to obtain PSD permits for GHG emissions where no permitting authority is authorized to issue such a permit. However, it is impractical to wait 30 days for this rule to take effect, during which time no permitting authority would be authorized to issue permits to any major stationary sources that apply to obtain PSD permits for GHG emissions. Moreover, EPA finds that it is necessary to make this rule effective upon publication to avoid any economic harm that the public and the regulated industry might incur if there is no permitting authority able to issue PSD permits for GHG emissions when such permits are requested in Jefferson County, Kentucky.

The purpose of the APA's 30-day effective date provision is

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to give affected parties time to adjust their behavior before the final rule takes effect. The LMAPCD, to which this rulemaking applies, indicated in a comment letter to EPA that it did not object to a SIP submittal deadline of January 1, 2011. Both the LMAPCD and the public have been aware that we would take this approach to this rule for some time, that is, that we would establish a SIP submittal deadline on a date to which the state does not object, potentially as early as December 22, 2010, so that we could make a finding of failure to submit and promulgate a FIP immediately thereafter, and potentially as early as December 23, 2010, in order that the FIP could be in effect on or as soon as possible after the January 2, 2011, date that PSD begins to apply to GHG-emitting sources. We described this approach in the proposed SIP call that was signed and made available to the public on August 12, 2010, even before its September 2, 2010, publication date in the Federal Register. Moreover, the public was afforded the opportunity to comment on this approach in the SIP call proposal. See 75 FR 53892, 53896.

In addition, this rule is not a major rule under the Congressional Review Act (CRA). Thus, the 60-day delay in effective date required for major rules under the CRA does not apply.

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IV. Statutory and Executive Order Reviews

A. Notice and Comment under the Administrative Procedure Act (APA)

This is a final EPA action but is not subject to notice-and-comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking.

However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B), which excuses the notice-and-comment obligation "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." While the good cause exception is to be narrowly construed, Utility Solid Waste Activities Group v. Environmental Protection Agency, 236 F.3d 749, 754 (D.C. Cir. 2001), it is also "an important safety valve to be used where delay would do real harm." U.S. Steel Corp. v. U.S. Environmental Protection Agency, 595 F.2d 207, 214 (5th Cir.

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1979). Notice and comment is impracticable where "an agency finds that due and timely execution of its functions would be impeded by the notice otherwise required." Utility Solid Waste Activities Group, 236 F.3d at 754. Notice and comment is contrary to the public interest where "the interest of the public would be defeated by any requirement of advance notice." Id. at 755.

Here, notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit elements of SIP submissions required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert agency resources from the critical substantive review of complete SIPs. See 58 FR 51270, 51272, n.17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994). In addition, in this case, notice and comment would be impracticable and contrary to the public interest for the same reasons, discussed earlier in this preamble, why a 30-day effective date would be impracticable and contrary to the public interest.

B. Executive Order 12866 - Regulatory Planning and Review

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This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993). This action issues a finding that the LMAPCD has failed to submit a corrective SIP by the deadline established in EPA's recently promulgated SIP call for Jefferson County, Kentucky. This type of action is exempt from review under EO 12866.

C. Paperwork Reduction Act

This action does not impose any new information collection burden. However, 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.

D. 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 (APA) or any other statute. This rule is not subject to the notice-and-comment requirement of the

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APA, because the Agency has invoked the "good cause" exemption under 5 U.S.C. 553(b). Thus, this rule is not subject to the RFA.

E. 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 the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not impose any new obligations or enforceable duties on any small governments.

F. 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

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13132. This action merely prescribes EPA's action for states that do not meet their existing obligation for 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 this action, as part of the FIP proposal, from state and local officials.

G. 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 states that do not meet their existing obligation for PSD SIP submittal. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this final rule, EPA specifically solicited additional comment on the proposal for this action from tribal officials and we received one comment from a tribal agency. Additionally, EPA participated in a conference call on July 29, 2010, with the

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National Tribal Air Association (NTAA).

H. 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 states that do not meet their existing obligation for PSD SIP submittal.

I. 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 a significant regulatory action under Executive Order 12866. This action merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal.

J. 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

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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 is not considering the use of any voluntary consensus standards.

K. 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

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the U.S.

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 states that do not meet their existing obligation for PSD SIP submittal.

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. Section 804 exempts from section 801 the following types of rules: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of agency

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organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

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 such as the SIP call, the finding of failure to submit issued on December 29, 2010, and the FIP issued on December 30, 2010. In particular, this rule simply follows up on the finding of failure to submit issued on December 29, 2010, which affected seven states that chose the

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earliest possible deadline, and takes the next step to make an identical finding for Jefferson County, Kentucky, now that this area, too, has missed its SIP submittal deadline. The circumstances that have led to this rulemaking are national in scope and are substantially the same for the LMAPCD as they were for each of the seven affected states in the earlier finding of failure to submit issued on December 29, 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 deadlines for SIP submittal. Moreover, in this rule, EPA is applying the same uniform principles for promulgating the finding of failure to submit in Jefferson County, Kentucky, as it did for each of the seven earlier-affected states. The FIP for Jefferson County, Kentucky, accompanying this rule has substantially the same, if not identical, terms as the FIP for each earlier-affected state in the December 30, 2010, rule. This rulemaking action is supported by the same single administrative record as the earlier December 29, 2010, finding of failure to submit rule and does not involve factual questions

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unique to the LMAPCD. In addition, as stated earlier in this preamble, 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 the LMAPCD, EPA is determining that it is appropriate to make this finding of failure to submit effective immediately in order to promulgate the FIP immediately and to apply the FIP to GHG-emitting sources, but not other sources, in the same way it made the same determination for the seven other states in the December 29, 2010, finding of failure to submit. These determinations are the same for each of the states. The provisions of this finding of failure to submit are also substantially the same, if not identical, to those for the seven earlier-affected states. Moreover, EPA is making this finding and promulgating this action within the context of nationwide rulemakings and interpretation of the applicable CAA provisions, as noted earlier in this preamble.

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

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Circuit by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. 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 101, 111, 114, 116, and 301 of the CAA as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601).

Page 29 of 29 - Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure to Submit State Implementation Plan Revision Required of Louisville Metro Air Pollution Control District for Jefferson County, Kentucky

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:

Gina McCarthy,
Assistant Administrator, Office of Air and Radiation.

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