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[FR Doc. 2011-26900 Filed 10-17-11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R04-OAR-2010-0741-201071; FRL-9476-5]

Approval and Promulgation of Implementation Plans; North Carolina: Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revision**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is taking final action to approve a revision to the State Implementation Plan (SIP), submitted by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources' (NC DENR) Division of Air Quality, to EPA on August 11, 2010, for parallel processing. NC DENR submitted the final version of this SIP revision on May 17, 2011. The SIP revision establishes new NC DENR air quality regulations, specific to the regulation of greenhouse gases (GHGs) under North Carolina's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. Specifically, the SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to North Carolina's PSD permitting requirements for their GHG emissions. This rule incorporates state law changes into the federally approved SIP, and specifically, clarifies the applicable thresholds in the North Carolina SIP for GHG PSD requirements. EPA is approving North Carolina's May 17, 2011, SIP revision because the Agency has made the determination that this SIP revision is in accordance with the Clean Air Act (CAA or Act) and EPA regulations, including regulations pertaining to PSD permitting for GHGs. Additionally, EPA is responding to adverse comments received on EPA's November 5, 2010, proposed approval of North Carolina's August 11, 2010, draft SIP revision.

DATES: *Effective Date:* This rule will be effective November 17, 2011.**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2010-0741. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although

listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the 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. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the North Carolina SIP, contact Ms. Twunjala Bradley, 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. Bradley's telephone number is (404) 562-9352; e-mail address: bradley.twunjala@epa.gov. For information regarding the Tailoring Rule, contact Ms. Heather Abrams, Air Permits Section, at the same address above. Ms. Abrams' telephone number is (404) 562-9185; e-mail address: abrams.heather@epa.gov.

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I. What is the background for this final action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action on the North Carolina SIP. Four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single

final action,¹ the "Johnson Memo Reconsideration,"² the "Light-Duty Vehicle Rule,"³ and the "Tailoring Rule."⁴ Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis.

On August 11, 2010, in response to the Tailoring Rule and earlier GHG-related EPA rules, NC DENR submitted a draft revision to EPA for approval into the North Carolina SIP to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to North Carolina's PSD permitting requirements for GHG emissions. Subsequently, on November 5, 2010, EPA published a proposed rulemaking to approve a portion of North Carolina's August 11, 2010, SIP revision under parallel processing. *See* 75 FR 68279. Specifically, North Carolina's August 11, 2010, draft SIP revision incorporates by reference the Tailoring Rule provisions at 40 Code of Federal Regulations (CFR) 51.166 (as amended June 3, 2010, and effective August 2, 2010), into the North Carolina SIP at 15A North Carolina Administrative Code (NCAC) 02D .0544—*Prevention of Significant Deterioration Requirements for Greenhouse Gases*, to address the thresholds for GHG permitting applicability. Detailed background information and EPA's rationale for the proposed approval are provided in EPA's November 5, 2010, **Federal Register** notice.

EPA's November 5, 2010, proposed approval was contingent upon North Carolina providing a final SIP revision that was substantively the same as the revision proposed for approval by EPA in the November 5, 2010, proposed rulemaking. *See* 75 FR 68279. North Carolina provided its final SIP revision on May 17, 2011. In its final SIP revision, North Carolina made minor

¹ "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

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

³ "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

⁴ "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

formatting changes, and added a couple of clarifications. The formatting changes included changing a couple of periods to semicolons and adding the word “and” behind a semicolon to transition to the next statement. With regard to the clarifications, North Carolina deleted the phrase “Except for 40 CFR 81.334” and added a notation to explicitly identify the effective date of the Federal Tailoring Rule (*i.e.*, August 2, 2010) that is being incorporated by reference by North Carolina. Besides the minor formatting changes and the aforementioned clarifications, there were no differences between North Carolina’s August 11, 2010, draft SIP revision, and the final SIP revision which was provided on May 17, 2011.

On December 30, 2010, EPA published a final rule which narrowed its previous approval of PSD programs as applicable to GHG-emitting sources in SIPs for 24 states, including North Carolina.⁵ See 75 FR 82536 (PSD Narrowing Rule). Specifically, in the PSD Narrowing Rule, EPA withdrew its previous approval of North Carolina’s SIP to the extent it applied PSD to GHG-emitting sources below the thresholds in the final Tailoring Rule.

The effect of the PSD Narrowing Rule on the approved North Carolina SIP was to establish that new and modified sources are subject to PSD permitting requirements for their GHG emissions only if they emit GHGs at or above the Tailoring Rule’s emission thresholds. As result of today’s action approving North Carolina’s incorporation of the appropriate GHG permitting thresholds into its SIP, paragraph (c) in 40 CFR 52.1772, as included in EPA’s Narrowing Rule, is no longer necessary. Thus, today’s action also amends section 40 CFR 52.572 to remove this unnecessary regulatory language.

II. What is EPA’s response to comments received on this action?

EPA received three sets of comments on the November 5, 2010, proposed rulemaking to approve revisions to North Carolina’s SIP. One set of comments, provided by the Sierra Club, was in favor of EPA’s November 5, 2010, proposed action. The other two sets of comments, provided by the Air Permitting Forum and the John Locke Foundation, raised concerns with final action on EPA’s November 5, 2010, proposed action. A full set of the comments provided by the Sierra Club, the Air Permitting Forum (hereinafter

referred to as the “Commenter”) and the John Locke Foundation (also hereinafter referred to as the “Commenter”) is provided in the docket for today’s final action. The comments can be accessed at <http://www.regulations.gov> using Docket ID No. EPA-R04-OAR-2010-0741. A summary of the adverse comments and EPA’s responses are provided below.

Generally, the adverse comments fall into six categories. First, the Commenter asserts that PSD requirements cannot be triggered by GHGs. Second, the Commenter expresses concerns regarding a footnote in the November 5, 2010, proposal describing EPA’s previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule’s thresholds will not be obligated under federal law to obtain PSD permits prior to a SIP revision incorporating those thresholds. The Commenter explains that the planned SIP approval narrowing action, which has now resulted in the PSD Narrowing Rule, “is illegal.” Third, the Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Fourth, the Commenter states: “EPA should explicitly state in any final rule that the continued enforceability of these provisions in the North Carolina SIP is limited to the extent to which the federal requirements remain enforceable.” Fifth, the Commenter states that “EPA does not have statutory authority for the Tailoring Rule.” Lastly, the Commenter recommends that EPA re-propose the action once North Carolina has finalized its changes to the SIP. EPA’s responses to these six categories of comments are provided below.

Comment 1: The Commenter asserts that PSD requirements cannot be triggered by GHGs. In its letter, the Commenter reiterates EPA’s statement that without the Tailoring Rule thresholds, PSD will apply as of January 2, 2011, to all stationary sources that emit or have the potential to emit, depending on the source category, either 100 or 250 tons of GHG per year. The Commenter also reiterates EPA’s statement that beginning January 2, 2011, a source owner proposing to construct any new major source that emits at or above the GHG applicability levels, or modifies any existing major source in a way that would increase GHG emissions, would need to obtain a PSD permit that addresses these emissions before construction could begin. In raising concerns with the two aforementioned statements, the

Commenter states: “[n]o area in the State of North Carolina has been designated attainment or unclassifiable for greenhouse gases (GHGs), as there is no national ambient air quality standard (NAAQS) for GHGs. Therefore, GHGs cannot trigger PSD permitting.” The Commenter notes that it made this argument in detail in comments submitted to EPA on the Tailoring Rule and other related GHG rulemakings. The Commenter attached those previously submitted comments to its comments on the proposed rulemaking related to this action. Finally, the Commenter states that “EPA should immediately provide notice that it is now interpreting the Act not to require that GHGs trigger PSD and allow North Carolina to rescind that portion of its rules that would allow GHGs to trigger PSD.”

Response 1: EPA established the requirement that PSD applies to all pollutants newly subject to regulation, including non-NAAQS pollutants such as GHGs, in earlier national rulemakings concerning the PSD program, and EPA has not re-opened that issue in this rulemaking. In an August 7, 1980, rulemaking at 45 FR 52676, 45 FR 52710–52712, and 45 FR 52735, EPA stated that a “major stationary source” was one which emitted “any air pollutant subject to regulation under the Act” at or above the specified numerical thresholds; and defined a “major modification,” in general, as a physical or operational change that increased emissions of “any pollutant subject to regulation under the Act” by more than an amount that EPA variously termed as *de minimis* or significant. In addition, EPA’s 2002 NSR Reform rules EPA added to the PSD regulations the new definition of “regulated NSR pollutant” (currently codified at 40 CFR 52.21(b)(50) and 40 CFR 51.166(a)(49)) and; noted that EPA added this term based on a request from a commenter to “clarify which pollutants are covered under the PSD program.” Further EPA explained that in addition to criteria pollutants for which a NAAQS has been established, “[t]he PSD program applies automatically to newly regulated NSR pollutants, which would include final promulgation of an NSPS [new source performance standard] applicable to a previously unregulated pollutant.” See 67 FR 80186, 80240 and 80264 (December 31, 2002). Among other things, the definition of “regulated NSR pollutant” includes “[a]ny pollutant that otherwise is subject to regulation under the Act.” See 40 CFR 52.21(b)(50)(d)(iv); 40 CFR 51.166(a)(49)(iv).

EPA disagrees with the Commenter’s underlying premise that PSD

⁵ “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans.” 75 FR 82536 (December 30, 2010).

requirements were not triggered for GHGs when GHGs became subject to regulation on January 2, 2011. This has been well established and discussed in connection with prior EPA actions, including, most recently, the Johnson Reconsideration and the Tailoring Rule. In addition, EPA's November 5, 2010, proposed rulemaking action provides the general basis for the Agency's rationale that GHGs, while not a NAAQS pollutant, can trigger PSD permitting requirements. The November 5, 2010, action also refers the reader to the preamble of the Tailoring Rule for further information on this rationale. In that rulemaking, EPA addressed at length the comment that PSD can be triggered only by pollutants subject to the NAAQS, and concluded such an interpretation of the Act would contravene Congress' unambiguous intent. See 75 FR 31560–31562. Further discussion of EPA's rationale for concluding that PSD requirements are triggered by non-NAAQS pollutants such as GHGs appears in the Tailoring Rule Response-to-Comments document ("Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA's Response to Public Comments"), pp. 34–41; and in EPA's response to motions for a stay filed in the litigation concerning those rules ("EPA's Response to Motions for Stay," *Coalition for Responsible Regulation v. EPA*, D.C. Cir. No. 09–1322 (and consolidated cases)), at pp. 47–59, and are incorporated by reference here. These documents have been placed in the docket for today's action and can be accessed at <http://www.regulations.gov> using Docket ID No. EPA–R04–OAR–2010–0741.

Comment 2: The Commenter expresses concerns regarding a footnote in which EPA describes its previously announced intention to narrow its prior approval of some SIPs. In the footnote, EPA explained that such narrowing would ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds are not obligated under federal law to obtain PSD permits during any gap between the effective date of GHG-permitting requirements (January 2, 2011) and the date that a SIP is revised to incorporate the Tailoring Rule thresholds. The Commenter asserts that EPA's narrowing of its prior SIP approvals "is illegal." Further, the Commenter states that "EPA has *not* proposed to narrow North Carolina's SIP approval here and any such proposal must be explicit and address the action specifically made with respect to North Carolina's. EPA

cannot sidestep these important procedural requirements."

Response 2: While EPA disagrees with the Commenter's assertion that the narrowing approach discussed in EPA's Tailoring Rule is illegal, the narrowing approach was not the subject of EPA's November 5, 2010, proposed rulemaking to approve North Carolina's August 11, 2010, SIP revision. Rather, the narrowing approach was the subject of a separate rulemaking, which was considered and finalized in the PSD Narrowing Rule in an action separate from today's rulemaking. See 75 FR 82536 (December 30, 2010). In today's final action, EPA is acting to approve a SIP revision submitted by North Carolina, and is not otherwise narrowing its approval of prior submitted and approved provisions in the North Carolina SIP. Accordingly, the legality of the narrowing approach is not at issue in this rulemaking.

Comment 3: The Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Specifically, the Commenter refers to the statutory and executive orders for the Paperwork Reduction Act, the Regulatory Flexibility Act (RFA), Unfunded Mandates Reform Act, and Executive Order 13132 (Federalism). Additionally, the Commenter mentions that EPA has never analyzed the costs and benefits associated with triggering PSD for stationary sources in North Carolina, much less nationwide.

Response 3: EPA disagrees with the Commenter's statement that EPA has failed to meet applicable statutory and executive order review requirements. As stated in EPA's proposed approval of North Carolina's May 17, 2011, SIP revision, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. Accordingly, EPA approval, in and of itself, does not impose any new information collection burden, as defined in 5 CFR 1320.3(b) and (c), that would require additional review under the Paperwork Reduction Act. In addition, because today's action simply approves existing state law, it will not have a significant economic impact on a substantial number of small entities beyond the impact of existing state law requirements. Thus, a regulatory flexibility analysis is not required under the RFA. Accordingly, this rule is appropriately certified under section 605(b) of the RFA. Moreover, as this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law,

it does not contain any unfunded mandates or significantly or uniquely affect small governments, such that it would be subject to the Unfunded Mandates Reform Act. Finally, this action does not have federalism implications that would make Executive Order 13132 applicable because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

In sum, today's rule is a routine approval of a SIP revision, approving state law, and does not impose any requirements beyond those imposed by state law. To the extent these comments are directed more generally to the application of the statutory and executive order reviews to the required regulation of GHGs under PSD programs, EPA provided an extensive response to similar comments in promulgating the Tailoring Rule. EPA refers the Commenter to the sections in the Tailoring Rule entitled "VII. *Comments on Statutory and Executive Order Reviews*," 75 FR 31601–31603, and "VI. *What are the economic impacts of the final rule?*," 75 FR 31595–31601. EPA also notes that today's action is not itself the trigger for regulation of GHGs. To the contrary, by helping to clarify that higher PSD applicability thresholds for GHGs apply than would otherwise be in effect under the Act, this rulemaking, as well as EPA's Tailoring Rule, is part of the effort to provide relief to smaller GHG-emitting sources that would otherwise be subject to PSD permitting requirements for their GHG emissions.

Comment 4: The Commenter states that "[i]f EPA proceeds with this action, it must condition approval on the continued validity of its determination that PSD can be triggered by or is applicable to GHGs." Further, the Commenter remarks on the ongoing litigation in the U.S. Court of Appeals for the D.C. Circuit. Specifically, regarding EPA's determination that PSD can be triggered by GHGs or is applicable to GHGs, the Commenter mentions that "EPA should explicitly state in any final rule that continued enforceability of these provisions in the North Carolina SIP is limited to the extent to which the federal requirements remain enforceable." The Commenter notes that if a stay is issued, these requirements should also be stayed.

Response 4: EPA believes that it is most appropriate to take actions that are consistent with the federal regulations that are in place at the time the action is being taken. To the extent that any changes to federal regulations related to

today's action result from pending legal challenges or other actions, EPA will process appropriate SIP revisions in accordance with the procedures provided in the Act and EPA's regulations. EPA notes that in an order dated December 10, 2010, the United States Court of Appeals for the D.C. Circuit denied motions to stay EPA's regulatory actions related to GHGs. *Coalition for Responsible Regulation, Inc. v. EPA*, Nos. 09–1322, 10–1073, 10–1092 (and consolidated cases), Slip Op. at 3 (D.C. Cir. December 10, 2010) (order denying stay motions).

Comment 5: The Commenter states that "EPA does not have statutory authority for the Tailoring Rule." Additionally, the Commenter states that "EPA's proposal to revise North Carolina's SIP to include greenhouse gases (GHG) is grounded in an improper interpretation of the Clean Air Act (CAA). Specifically, the EPA is ignoring the plain and unambiguous language of the CAA to justify the regulation of GHG. If the EPA did not change the threshold levels for GHG, by the agency's own admission, there would be 'absurd' results."

Response 5: While EPA does not agree with the Commenter's statement that "EPA does not have statutory authority for the Tailoring Rule," EPA notes that the statutory authority for the Tailoring Rule was not the subject of EPA's November 5, 2010, proposed rulemaking to approve North Carolina's August 11, 2010, SIP revision. Rather, the requirements of the Tailoring Rule were the subject of a separate rulemaking. In EPA's final action for the Tailoring Rule, EPA provided extensive discussion and response to comments regarding legality of the Tailoring Rule in a section entitled, "*V. What is the Legal and Policy Rationale for the Final Action?*" See 75 FR 31527–31595. In today's final action, EPA is taking action to approve a SIP revision submitted by North Carolina, and is not reopening comment on the legality of the Tailoring Rule.

Comment 6: The Commenter mentions that the "comments being provided to EPA are based on proposed revisions, not final revisions," and that "the differences between the proposed and final North Carolina revisions may or may not be substantial, but they certainly could affect how the public comments on the EPA's proposed rule." The Commenter states "it is unclear why the EPA believes it is appropriate and legally supportable to seek comments on a yet-to-be finalized revision to a SIP. Further, it is not clear what would constitute 'significant changes' that would require the EPA to re-propose the action." The Commenter

concludes by recommending that EPA re-propose the action once North Carolina has finalized its changes to the SIP.

Response 6: The procedure utilized by EPA to solicit public comment on North Carolina's SIP revision was appropriate and lawful. As explained in EPA's proposal at 75 FR 68279, EPA utilized a "parallel processing" procedure for this SIP revision. Under this procedure, EPA proposes rulemaking action concurrently with the State's procedures for approving a SIP submittal and amending its regulations (40 CFR part 51, appendix V, 2.3). EPA reviews that SIP submittal, even though the regulation is not yet adopted in final form by the State, as if it were a final, adopted regulation. In doing so, EPA evaluates the draft regulation against the same approvability criteria as any other SIP submittal. Thus, EPA has not used the "parallel processing" procedure to avoid any statutory requirements. In this case, as explained earlier in this action, EPA has determined that the minor differences between the draft and final regulations are insignificant and do not warrant re-proposal of this action. Accordingly, the proposal gave the public the appropriate opportunity to comment on the substance of the SIP revision for which EPA is today issuing a final approval.

III. What is the effect of this final action?

Final approval of North Carolina's May 17, 2011, SIP revision will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule (75 FR 31514, June 3, 2010) and adopted as state law, making clear that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements under the approved North Carolina SIP. Pursuant to section 110 of the CAA, EPA is approving the changes made in North Carolina's May 17, 2011, SIP revision into North Carolina's SIP.

North Carolina's May 17, 2011, revision establishes a new regulation specifically to incorporate by reference the relevant federal Tailoring Rule provisions set forth at 40 CFR 51.166 into the North Carolina SIP at 15A North Carolina Administrative Code (NCAC) 02D .0544—*Prevention of Significant Deterioration Requirements for Greenhouse Gases*. EPA has determined that North Carolina's May 17, 2011, SIP revision is consistent with the Tailoring Rule. Furthermore, EPA has determined that the May 17, 2011, revision to North Carolina's SIP is consistent with section 110 of the CAA. See, e.g., Tailoring Rule, 75 FR 31561.

IV. Final Action

EPA is taking final action to approve North Carolina's May 17, 2011, SIP revision which includes updates to North Carolina's air quality regulations, 15A North Carolina Administrative Code (NCAC) 02D .0544—*Prevention of Significant Deterioration Requirements for Greenhouse Gases*. Specifically, North Carolina's May 17, 2011, SIP revision clarifies appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting sources in accordance with EPA's Tailoring Rule, and incorporates those thresholds in the form in which they are stated in state law. EPA has made the determination that the May 17, 2011, SIP revision is approvable because it is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHGs.

As result of EPA's approval of North Carolina's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into North Carolina's SIP, paragraph (c) in Section 52.1772 of 40 CFR part 52, as included in EPA's Narrowing Rule, is no longer necessary. In today's final action EPA is also amending Section 52.1772 of 40 CFR part 52 to remove this unnecessary regulatory language.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 19, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 20, 2011.

A. Stanley Meiburg,
Acting Regional Administrator, Region 4.

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 II—North Carolina

- 2. Section 52.1770(c) Table 1, is amended under Subchapter 2D, Section .0500 by adding a new entry “Sect .0544” to read as follows:

§ 52.1770 Identification of plan.

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(c) * * *

TABLE 1—EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirements				
Section .0500 Emission Control Standards				
Sect .0544	Prevention of Significant Deterioration Requirements for Greenhouse Gases.	12/16/10	October 18, 2011, [Insert citation of publication].	

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§ 52.1772 [Amended]

- 3. Section 52.1772 is amended by removing paragraph (c).

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