

CARB on November 14, 2011, as supplemented on April 24, 2013, satisfies the attainment contingency measure requirement in CAA section 172(c)(9) for the 1997 PM<sub>2.5</sub> NAAQS in the South Coast nonattainment area, and to fully approve this submission into the California SIP. Simultaneously, we are proposing to conclude that the RFP contingency measure requirement in CAA section 172(c)(9) for the 2012 milestone year is moot as applied to the South Coast because the area achieved its emission reduction benchmarks for the 2012 RFP year.

Final approval of the Contingency Measures SIP, as supplemented, would correct the deficiencies that were the basis for EPA's partial disapproval of the South Coast PM<sub>2.5</sub> SIP on November 9, 2011 (76 FR 69928) and would, therefore, terminate the CAA section 179(b) sanctions clocks triggered by that action and the obligation on EPA to promulgate a FIP within two years of that action.

EPA will accept public comments on this proposal for the next 30 days.

## V. 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 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 proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed 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 Clean Air Act; and
- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action 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.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 12, 2013.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2013-14918 Filed 6-21-13; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2013-0417; FRL-9827-2]

### Approval and Promulgation of Air Quality Implementation Plans; Rescission of Federal Implementation Plan; Wyoming; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions and additions to the Wyoming State Implementation Plan (SIP) submitted by the Wyoming Department

of Environmental Quality (WDEQ) to EPA on March 8, 2013. The proposed SIP revision to the Wyoming Prevention of Significant Deterioration (PSD) program updates the program to regulate permitting of sources of greenhouse gases (GHGs). Specifically, we propose to approve revisions to Chapter 1, Common Provisions, Section 3, Definitions, and Chapter 6, Permitting Requirements, Section 4, Prevention of Significant Deterioration, and the addition of Chapter 1, Section 7, Greenhouse Gases. The March 8, 2013 proposed SIP revision to the Wyoming PSD program establishes emission thresholds for determining which new stationary sources and modifications to existing stationary sources become subject to Wyoming's PSD permitting requirements for their GHG emissions. The March 8, 2013 proposed 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 proposing to approve the March 8, 2013 SIP revision to the Wyoming PSD permitting program as being consistent with federal requirements for PSD permitting. EPA is also proposing to rescind the GHG PSD Federal Implementation Plan (FIP) for Wyoming that was put in place to ensure the availability of a permitting authority for GHG PSD permitting in Wyoming, which would be effective upon final approval of the March 8, 2013 PSD SIP revision. EPA is proposing this action under section 110 and part C of the Clean Air Act (the Act or CAA).

**DATES:** Comments must be received on or before July 24, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2013-0417, by one of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Email:* [ostendorf.jody@epa.gov](mailto:ostendorf.jody@epa.gov)
- *Fax:* (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- *Mail:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop St., Denver, Colorado 80202-1129.

- *Hand Delivery:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop St., Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding

Federal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R08-OAR-2013-0417. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or email, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through

Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jody Ostendorf, Air Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202-1129, (303) 312-7814, [ostendorf.jody@epa.gov](mailto:ostendorf.jody@epa.gov)

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. Information is organized as follows:

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**I. Background for Our Proposed Action**

Clean Air Act (CAA) section 110(a)(2)(C) requires states to develop and submit to EPA for approval into the state SIP preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants. There are three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. The PSD program is established in part C of title I of the CAA and applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—"attainment areas"—as well as areas where there is insufficient information to determine if the area meets the NAAQS—"unclassifiable areas." The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—"nonattainment areas." The Minor NSR program (1) addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source thresholds and thus do not qualify as "major" and (2) applies regardless of the designation of the area in which a source is located. EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR sections 51.160—51.166.

Wyoming submitted on March 8, 2013 a collection of regulations for approval by EPA into the Wyoming SIP, including some regulations specific to the Wyoming PSD permitting program. The March 8, 2013 SIP submittal includes PSD permitting provisions that (1) Establish that GHG is a regulated pollutant under the PSD program, (2) establish emission thresholds for

determining which new stationary sources and modification projects become subject to Wyoming's PSD permitting requirements for their GHG emissions consistent with the "PSD and Title V Greenhouse Gas Tailoring Final Rule" (75 FR 31514) hereafter referred to as the "Tailoring Rule", and (3) defer the application of the PSD requirements to biogenic carbon dioxide emissions from bioenergy and other biogenic stationary sources consistent with the EPA's final rule "Deferral for CO<sub>2</sub> Emissions from Bioenergy and other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs" (76 FR 43490). More details of the submittal are provided in sections II and III below.

Today's proposed action presents our rationale for approving these regulations as meeting the minimum federal requirements for the adoption and implementation of the PSD SIP permitting programs. In addition, Wyoming is currently subject to the GHG PSD FIP at 40 CFR 52.37(b)(2). See 75 FR 82246, December 10, 2010. We are also proposing to rescind the GHG PSD FIP for Wyoming when we approve Wyoming's submittal.

**A. History of EPA's GHG-Related Actions**

This section briefly summarizes EPA's recent GHG-related actions that provide the background for this action. Please see the preambles for the identified GHG-related rulemakings for more information.

Beginning in 2010, EPA undertook a series of actions pertaining to the regulation of GHGs that established the overall framework for today's final action on the Wyoming SIP. These actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,<sup>1</sup> the "Johnson Memo Reconsideration,"<sup>2</sup> the "Light-Duty Vehicle Rule,"<sup>3</sup> and the "Tailoring Rule."<sup>4</sup> 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;

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

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

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

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

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. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

In December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP call on December 13, 2010, that would require those states to submit a SIP revision providing such authority.<sup>5</sup> The State of Wyoming, along with several other states, did not submit a corrective SIP revision to apply their CAA PSD programs to sources of GHG emissions by the established deadline. EPA published a finding of failure to submit the required SIP revision by the specified deadline and then promulgated the GHG PSD FIP to ensure the availability of a permitting authority for GHG emitting sources in Wyoming and the other states.<sup>6,7</sup>

At the same time, EPA recognized that many other states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tons per year (tpy) of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule. Therefore, EPA issued the GHG PSD SIP Narrowing Rule,<sup>8</sup> under which, EPA converted its previous full approval of the affected SIPs to a partial approval and partial disapproval, to the extent

those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the “error correction” provisions of CAA section 110(k)(6). Many of those states have since submitted SIP revisions that have established the Tailoring Rule thresholds, and EPA has approved those SIP revisions and rescinded the partial disapprovals.

#### *B. EPA’s Biomass Deferral Rule*

On July 20, 2011, EPA promulgated the final “Deferral for CO<sub>2</sub> Emissions from Bioenergy and other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs” (Biomass Deferral Rule). Following is a brief discussion of the deferral. For a full discussion of EPA’s rationale for the rule, see the notice of final rulemaking at 76 FR 43490.

The biomass deferral delays until July 21, 2014 the consideration of Carbon Dioxide (CO<sub>2</sub>) emissions from bioenergy and other biogenic sources (hereinafter referred to as “biogenic CO<sub>2</sub> emissions”) when determining whether a stationary source meets the PSD and Title V applicability thresholds, including those for the application of Best Available Control Technology (BACT). As with the Tailoring Rule, the Biomass Deferral addresses both PSD and Title V requirements. However, EPA is taking action on only Wyoming’s PSD program as part of this action. Stationary sources that combust biomass (or otherwise emit biogenic CO<sub>2</sub> emissions) and construct or modify during the deferral period will avoid the application of PSD to the biogenic CO<sub>2</sub> emissions resulting from those actions. The deferral applies only to biogenic CO<sub>2</sub> emissions and does not affect non-GHG pollutants or other GHGs (e.g., methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O)) emitted from the combustion of biomass fuel. Also, the deferral only pertains to biogenic CO<sub>2</sub> emissions in the PSD and Title V programs and does not pertain to any other EPA programs such as the GHG Reporting Program. Biogenic CO<sub>2</sub> emissions are defined as emissions of CO<sub>2</sub> from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples of “biogenic CO<sub>2</sub> emissions” include, but are not limited to:

- CO<sub>2</sub> generated from the biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- CO<sub>2</sub> from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater

treatment or manure management processes;

- CO<sub>2</sub> from fermentation during ethanol production or other industrial fermentation processes;
- CO<sub>2</sub> from combustion of the biological fraction of municipal solid waste or biosolids;
- CO<sub>2</sub> from combustion of the biological fraction of tire-derived fuel; and
- CO<sub>2</sub> derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

The three-year deferral period was put in place as a temporary measure, to allow time for EPA to complete its science and technical review and promulgate any follow-on rulemakings based on EPA’s conclusions concerning the proper treatment of biogenic CO<sub>2</sub> emissions in the PSD and Title V programs. In the event that EPA takes action that supersedes the biomass deferral in fewer than three years, Wyoming should revise its SIP accordingly.

For stationary sources co-firing fossil fuel and biologically-based fuel, and/or combusting mixed fuels (e.g., tire derived fuels, municipal solid waste (MSW)), the biogenic CO<sub>2</sub> emissions from that combustion are included in the biomass deferral. However, the fossil CO<sub>2</sub> emissions are not. Emissions of CO<sub>2</sub> from processing of mineral feedstocks (e.g., calcium carbonate) are also not included in the deferral. Various methods are available to calculate both the biogenic and fossil portions of CO<sub>2</sub> emissions, including those methods contained in the GHG Reporting Program (40 CFR Part 98). Consistent with the other pollutants in PSD and Title V, there are no requirements to use a particular method in determining biogenic and fossil CO<sub>2</sub> emissions.

EPA’s final biomass deferral rule is an interim deferral for biogenic CO<sub>2</sub> emissions only and does not relieve sources of the obligation to meet the PSD and Title V permitting requirements for other pollutant emissions that are otherwise applicable to the source during the deferral period or that may be applicable to the source at a future date pending the results of EPA’s study and subsequent rulemaking action. This means, for example, that if the deferral is applicable to biogenic CO<sub>2</sub> emissions from a particular source during the three-year effective period and the study and future rulemaking do not provide for a permanent exemption from PSD and Title V permitting requirements for the biogenic CO<sub>2</sub> emissions from a source with particular characteristics, then the deferral would

<sup>5</sup> “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,” 75 FR 77698 (Dec. 13, 2010).

<sup>6</sup> “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 Revisions Required for Greenhouse Gases,” 75 FR 81874 (December 29, 2010).

<sup>7</sup> “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 (December 30, 2010). Because Wyoming did not submit by the established deadline, a corrective SIP revision to apply their Clean Air Act PSD program to sources of GHGs, Wyoming is subject to the GHG PSD FIP.

<sup>8</sup> “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans,” 75 FR 82536 (December 30, 2010). The GHG PSD SIP Narrowing Rule does not apply to Wyoming because the GHG PSD FIP is in place.

end for that type of source and its biogenic CO<sub>2</sub> emissions would have to be appropriately considered in any applicability determinations that the source may need to conduct for future stationary source permitting purposes, consistent with that subsequent rulemaking and the Final Tailoring Rule (e.g., a major source determination for Title V purposes or a major modification determination for PSD purposes).

EPA also wishes to clarify that we did not require that a PSD permit issued during the deferral period be amended or that any PSD requirements in a PSD permit existing at the time the deferral took effect, such as BACT limitations, be revised or removed from an effective PSD permit for any reason related to the deferral or when the deferral period expires. Section 52.21(w) of 40 CFR requires that any PSD permit shall remain in effect, unless and until it expires or it is rescinded, under the limited conditions specified in that provision. Thus, a PSD permit that is issued to a source while the deferral was effective need not be reopened or amended if the source is no longer eligible to exclude its biogenic CO<sub>2</sub> emissions from PSD applicability after the deferral expires. However, if such a source undertakes a modification that could potentially require a PSD permit and the source is not eligible to continue excluding its biogenic CO<sub>2</sub> emissions after the deferral expires, the source will need to consider its biogenic CO<sub>2</sub> emissions in assessing whether it needs a PSD permit to authorize the modification.

Any future actions to modify, shorten, or make permanent the deferral for biogenic sources are beyond the scope of the biomass deferral action and this proposed approval of the deferral into the Wyoming SIP, and will be addressed through subsequent rulemaking. The results of EPA's ongoing review of the science related to net atmospheric impacts of biogenic CO<sub>2</sub> are incomplete. The framework to properly account for such emissions in Title V and PSD permitting programs based on the study is also incomplete. Thus, we are unable to determine which biogenic CO<sub>2</sub> sources currently subject to the deferral would be subject to any permanent exemptions, or would be potentially required to account for their emissions after a future rulemaking by EPA. Once EPA has taken any future rulemaking, Wyoming should address related revisions to its SIP.

## II. History of State Submittals

As noted, on June 3, 2010, EPA promulgated the Tailoring Rule, setting out requirements for application of PSD

to emissions sources of GHGs.

Previously, updates to Wyoming's PSD permit program had been most recently approved by EPA on July 16, 2008. As described in our notice of approval (73 FR 40750), Wyoming's PSD program at that date met the general requirements of CAA section 110(a)(2)(C).

On December 13, 2010, EPA published a finding of substantial inadequacy and a SIP call for 13 states and localities, including Wyoming, on the basis, as described above, that the states' SIP-approved PSD programs did not apply PSD to GHG-emitting sources as required. EPA included Wyoming on the basis of comments from Wyoming that state law (specifically, Wyoming Statutes section 35–11–213) prevented it from revising its SIP to incorporate the GHG provisions of the Tailoring Rule. Seven of those states, including Wyoming, received a deadline of December 22, 2010 to submit the required SIP revisions, after indicating that they would not oppose EPA's imposition of that deadline. On December 29, 2010, EPA published a finding that Wyoming and the other six states had failed to submit the required SIP revisions (75 FR 81874). Finally, on December 30, 2010, EPA published a FIP for Wyoming and the other six states to ensure that PSD permits for sources emitting GHGs could be issued and that incorporated the Tailoring Rule thresholds (75 FR 82246). EPA made clear in the SIP call and FIP rulemakings that the purpose of the rulemakings and their expedited schedules was to ensure that GHG-emitting sources in the affected states would have available a permitting authority to act on the GHG PSD permit applications by the January 2, 2011 date that GHGs became subject to PSD. EPA also emphasized that its "overarching goal is to assure that in every instance, it will be the state that will be the permitting authority," and that as a result, EPA sought to return permitting authority to the states as soon as possible. 75 FR at 77717 (SIP call final rule).

Since then, Wyoming's Legislature has twice amended Wyoming Statutes section 35–11–213 to allow for regulation of GHGs. First, during the 2012 legislative session, the Wyoming Legislature directed the Wyoming DEQ and the Wyoming Environmental Quality Council to "adopt regulations to amend Wyoming's Clean Air Act state implementation plan and Wyoming's Title V operating permit program to the extent necessary to obtain state primacy over the regulation of greenhouse gases by the U.S. EPA." Then, during the 2013 legislative session, the Wyoming

Legislature authorized the Wyoming DEQ to "submit an amended state implementation plan providing for regulation of greenhouse gases to the U.S. EPA for approval." Once the second bill was signed into law, Wyoming's rule revisions for its PSD program became effective on February 14, 2013. Wyoming DEQ submitted the revisions to EPA on March 8, 2013.

## III. EPA's Analysis of the State's Submittal

Wyoming has adopted and submitted regulations that are substantively similar to the federal requirements for the permitting of GHG-emitting sources subject to PSD. We propose to conclude that the revisions are consistent with the requirements of 40 CFR 51.166, in particular requirements set out in EPA's final GHG Tailoring Rule, and that the revisions should be approved into Wyoming's SIP.

Section 3 of Chapter 1, Common Provisions, was revised to add a definition of "greenhouse gases (GHGs)." This definition is used in new Section 7, Greenhouse Gases, to specify that preconstruction permits for GHGs are only required under the PSD permitting program, thus exempting minor sources from GHG permitting. Section 4 of Chapter 6, Permitting Requirements, was modified to establish thresholds for permitting of GHGs under the PSD program. Definitions for the terms "GHGs," "emissions increase" and "tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)" with exclusions for biogenic sources, were added to this section. Applicability thresholds for several different types of permitting scenarios were also added. Changes were made to the PSD definition of "Major source" to avoid triggering applicability for minor sources. Chapter 6, Section 14, Incorporation by Reference was revised to generally incorporate by reference federal regulations, such as PSD and NSR, as published on July 1, 2010, with the exception of references to GHG-related regulations that were published after that date.

Wyoming organized its revisions to its PSD program somewhat differently than EPA's Tailoring Rule revisions to 40 CFR 51.166. In particular, Wyoming did not define the term "subject to regulation"; instead Wyoming separately defined the term "greenhouse gases." In the definition of "greenhouse gases," Wyoming established thresholds for application of PSD to sources of GHGs that are consistent with the thresholds established in the Tailoring Rule. In particular, within the definition of "greenhouse gases," Wyoming provided a definition of "tpy CO<sub>2</sub>

equivalent emissions” and a modified definition of “emissions increase” consistent with the use of those terms in 40 CFR 51.166(b)(48)(ii) and (iii).

Wyoming also modified the definition of “major stationary source” to directly account for sources of GHGs. The net effect of Wyoming’s approach is that, if a new pollutant (other than GHGs) becomes subject to regulation under the definition of “subject to regulation” in 40 CFR 51.166(b)(48), Wyoming must update its PSD program again to reflect the requirement to regulate that new pollutant. However, Wyoming’s SIP revision is consistent with current requirements for PSD programs.

We also propose to conclude that the revisions appropriately defer the applicability of the Tailoring Rule thresholds for biogenic CO<sub>2</sub> emissions from bioenergy and other biogenic stationary sources consistent with EPA’s Biomass Deferral Final Rule. The deferral is provided for in subsection (i)(C) of Wyoming’s definition of “greenhouse gases.”

Finally, we are not proposing action at this time on Wyoming’s revision to Chapter 6, Permitting Requirements, Section 14, Incorporation by Reference. The revision to this provision updates the date of incorporation by reference of federal Regulations, such as PSD and NSR, to July 1, 2010. Because this update applies throughout Chapter 6, it affects other portions of Chapter 6, including Wyoming’s pending May 11, 2011 nonattainment NSR program submittal that we are not proposing to act on today. We intend to act on the March 8, 2013 revision to Chapter 6, Section 14 in tandem with our action on the May 11, 2011 submittal, in order to ensure that the update to the incorporation by reference date is applied to all pending submittals. The portions of the March 8, 2013 submittal we propose to act on today directly specify the version of the CFR to which they refer, so it is not necessary to act on the revision to Chapter 6, Section 14 at this time.

#### IV. Proposed Action

EPA proposes to approve portions of the March 8, 2013 submittal for incorporation into the SIP. Specifically, EPA proposes to approve revisions to Chapter 1, Common Provisions, Section 3, and Chapter 6, Permitting Requirements, Section 4, Prevention of Significant Deterioration, and the addition of Chapter 1, Common Provisions, Section 7, Greenhouse Gases. EPA has made the preliminary determination that these March 8, 2013 revisions are approvable because they were adopted and submitted in

accordance with the CAA and EPA regulations regarding PSD permitting for GHGs. We are not proposing at this time to act on the revision to Chapter 6, Permitting Requirements, Section 14, Incorporation by Reference.

As explained in today’s proposed notice, Wyoming is currently subject to a FIP for PSD permitting of GHG emissions. This GHG PSD FIP remains in place, and EPA remains the PSD permitting authority for GHG-emitting sources in Wyoming, until EPA finalizes our proposed approval of the March 8, 2013 submitted revision to the Wyoming SIP. At that point, the Wyoming SIP will contain a full GHG PSD program. We therefore propose that upon finalization of today’s SIP approval action, EPA will rescind the GHG PSD FIP for Wyoming.

#### 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 Clean Air Act. Accordingly, this proposed action merely approves some state law as meeting federal requirements; it 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 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).

#### List of Subjects in 40 CFR Part 52

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

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

Dated: June 12, 2013.

**Shaun L. McGrath,**

*Regional Administrator, Region 8.*

[FR Doc. 2013–15038 Filed 6–21–13; 8:45 am]

**BILLING CODE 6560–50–P**