(13) Proceed generally north, northwest, and west along the California Aqueduct, crossing over the Palmdale, Ritter Ridge, Lancaster West, Del Sur, Lake Hughes, and Fairmont Butte maps, onto the Neenach School map, to the aqueduct's intersection with the Pacific Crest National Scenic Trail and the Los Angeles Aqueduct in section 16, T8N, R16W; then

(14) Proceed north and northeast along the Pacific Crest National Scenic Trail and the Los Angeles Aqueduct as the aqueduct crosses over the Fairmont Butte map onto the Tylerhorse map to the 3,120-foot, marked elevation point at the West Antelope Station, section 3, T9N, R15W; then

(15) Proceed east-northeast along the Los Angeles Aqueduct (the Pacific Crest National Scenic Trail forks to the west at the 3,120-foot marked elevation point), crossing onto the Willow Springs map, to the aqueduct's intersection with Tehachapi Willow Springs Road, section 7, T10N, R13W; then

(16) Proceed southeast and south on Tehachapi Willow Springs Road, crossing onto the Little Buttes map, to the road's intersection with the 2,500-foot elevation line, section 17 west boundary line, T9N, R13W; then

(17) Proceed east and northeast along the 2,500-foot elevation line, crossing over the Willow Springs map and continuing onto the Soledad Mtn. map, where that line crosses over and back three times from the Rosamond map, to the line's intersection with the Edwards AFB boundary line, section 10, T9N, R12W; and then

(18) Proceed straight south along the Edwards AFB boundary line, crossing over to the Rosamond map, to the beginning point.

Signed: August 23, 2010.

John J. Manfreda,

Administrator.

[FR Doc. 2010–21989 Filed 9–1–10; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2010–0107; FRL–9190–8]

RIN–2060–AQ45

Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this rulemaking, EPA is proposing a Federal implementation plan (FIP) to apply in any State that is unable to submit, by its deadline, a corrective State implementation plan (SIP) revision to ensure that the State has authority to issue permits under the Clean Air Act's (CAA or Act) New Source Review Prevention of Significant Deterioration (PSD) program for sources of greenhouse gases (GHGs). This proposal is a companion rulemaking to "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," which is being signed and published on the same schedule. In that action, EPA is proposing to make a finding of substantial inadequacy and proposing to issue a SIP call for 13 States on grounds that their SIPs do not appear to apply the PSD program to GHG-emitting sources.

DATES: *Comments.* Comments must be received on or before October 4, 2010.

Public Hearing: One public hearing concerning the proposed regulation will be held. The date, time and location will be announced separately. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and the public hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0107 by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2010–0107, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Mail code: 6102T, Washington, DC 20460. Please include a total of 2 copies.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room 3334, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2010–0107. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0107. 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 whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail 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 and with any disk or CD–ROM you submit. 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, avoid any form of encryption, and 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.* For additional instructions on submitting comments, go to section I.C of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information 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 *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West Building, Room 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.*

SUPPLEMENTARY INFORMATION: For questions related to a specific State, local, or tribal permitting authority, or to submit information requested in this action, please contact the appropriate EPA regional office:

EPA regional office	Contact for regional office (person, mailing address, telephone number)	Permitting authority
I	Dave Conroy, Chief, Air Programs Branch, EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, (617) 918–1661.	Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont.
II	Raymond Werner, Chief, Air Programs Branch, EPA Region 2, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3706.	New Jersey, New York, Puerto Rico, and Virgin Islands.
III	Kathleen Anderson, Chief, Permits and Technical Assessment Branch, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–2173.	District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, and West Virginia.
IV	Dick Schutt, Chief, Air Planning Branch, EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104, (404) 562–9033.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
V	J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 886–1430.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
VI	Jeff Robinson, Chief, Air Permits Section, EPA Region 6, Fountain Place 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6435.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
VII	Mark Smith, Chief, Air Permitting and Compliance Branch, EPA Region 7, 901 North 5th Street, Kansas City, KS 66101, (913) 551–7876.	Iowa, Kansas, Missouri, and Nebraska.
VIII	Carl Daly, Unit Leader, Air Permitting, Monitoring & Modeling Unit, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6416.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
IX	Gerardo Rios, Chief, Permits Office, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3974.	Arizona; California; Hawaii and the Pacific Islands; Indian Country within Region 9 and Navajo Nation; and Nevada.
X	Nancy Helm, Manager, Federal and Delegated Air Programs Unit, EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101, (206) 553–6908.	Alaska, Idaho, Oregon, and Washington.

I. General Information

A. Does this action apply to me?

Entities potentially affected by this rule include States, local permitting authorities, and tribal authorities.[1] Any SIP-approved PSD air permitting regulation that is not structured such that it includes GHGs among pollutants subject to regulation under the Act will potentially be found substantially inadequate to meet CAA requirements, under CAA section 110(k)(5), and the State will potentially be affected by this rule. For example, if a State's PSD regulation identifies its regulated NSR pollutants by specifically listing each individual pollutant and the list omits GHGs, then the regulation is inadequate.

Entities potentially affected by this rule also include sources in all industry groups, which have a direct obligation under the CAA to obtain a PSD permit for GHGs for projects that meet the applicability thresholds set forth in the Tailoring Rule.[2] This independent obligation on sources is specific to PSD and derives from CAA section 165(a). Any source that is subject to a State PSD air permitting regulation not structured to apply to GHG-emitting sources will potentially rely on this rule to obtain a permit that contains emission limitations that conform to requirements under CAA section 165(a). The majority of entities potentially affected by this action are expected to be in the following groups:

Industry group	NAICS [a]
Utilities (electric, natural gas, other systems)	2211, 2212, 2213.
Manufacturing (food, beverages, tobacco, textiles, leather)	311, 312, 313, 314, 315, 316.
Wood product, paper manufacturing	321, 322.
Petroleum and coal products manufacturing	32411, 32412, 32419.
Chemical manufacturing	3251, 3252, 3253, 3254, 3255, 3256, 3259.
Rubber product manufacturing	3261, 3262.
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551.
Nonmetallic mineral product manufacturing	3271, 3272, 3273, 3274, 3279.
Primary and fabricated metal manufacturing	3311, 3312, 3313, 3314, 3315, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329.
Machinery manufacturing	3331, 3332, 3333, 3334, 3335, 3336, 3339.
Computer and electronic products manufacturing	3341, 3342, 3343, 3344, 3345, 4446.
Electrical equipment, appliance, and component manufacturing	3351, 3352, 3353, 3359.
Transportation equipment manufacturing	3361, 3362, 3363, 3364, 3365, 3366, 3366, 3369.
Furniture and related product manufacturing	3371, 3372, 3379.
Miscellaneous manufacturing	3391, 3399.

[1] EPA respects the unique relationship between the U.S. government and tribal authorities and acknowledges that tribal concerns are not interchangeable with State concerns. However, for convenience, we refer to "State" in this rulemaking to collectively mean State, local permitting authorities, and tribal authorities.

[2] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule. 75 FR 31514 (June 3, 2010). The Tailoring Rule is described in more detail later in this preamble.

Industry group	NAICS [a]
Waste management and remediation	5622, 5629.
Hospitals/nursing and residential care facilities	6221, 6231, 6232, 6233, 6239.
Personal and laundry services	8122, 8123.
Residential/private households	8141.
Non-residential (commercial)	Not available. Codes only exist for private households, construction and leasing/sales industries.

[a] North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this notice will be posted on the EPA's NSR Web site, under Regulations & Standards, at *http://www.epa.gov/nsr*.

C. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2010–0107.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

D. How can I find information about the public hearing?

The EPA will hold one public hearing on this proposal. The date, time, and location of the public hearing will be announced separately. The EPA encourages commenters to provide written versions of their oral testimonies either electronically or in paper copy. If you would like to present oral testimony at the public hearing, please notify Ms. Pamela S. Long, New Source Review Group, Air Quality Policy Division (C504–03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0641, or e-mail: *long.pam@epa.gov*. Persons interested in presenting oral testimony should notify Ms. Long at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also contact Ms. Long to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule.

E. How is the preamble organized?

The information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. What should I consider as I prepare my comments for EPA?
D. How can I find information about the public hearing?
E. How is the preamble organized?
II. Background and Context of Proposed Rule
A. Introduction
B. CAA and Regulatory Context
C. SIP Inadequacy and Corrective Action; Federal Implementation Plans
D. States That Do Not Appear To Apply the PSD Program to GHG Sources; PSD GHG SIP Call
III. Proposed Federal Implementation Plan
A. Timing for FIP
B. Substance of FIP
C. Primacy of the SIP Process
IV. Statutory and Executive Order Reviews
A. Executive Order 12866—Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform
E. Executive Order 13132—Federalism
F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Determination Under Section 307(d)
V. Statutory Authority

II. Background and Context of Proposed Rule

A. Introduction

In this rulemaking under the CAA, EPA is proposing a FIP for 13 States for which, in a companion action, EPA is proposing a finding of SIP substantial inadequacy and is proposing to issue a SIP Call because the States' PSD SIP programs do not appear to apply to sources of GHGs. "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" (the "PSD GHG SIP Call" or "SIP Call"). These two rulemakings address States whose permitting regulations and SIPs appear to fail to apply the PSD program to sources of GHGs in those States. As discussed further in this preamble, certain larger GHG-emitting sources will be subject to PSD permitting requirements on and after January 2, 2011. Thus, in States whose PSD programs do not apply to sources of GHGs, sources will be unable to obtain

a PSD permit that covers GHG emissions and therefore potentially unable to undertake construction or modification projects on and after January 2, 2011.

The States for which we are proposing a FIP are listed in table II–1, "States with SIPs That Do Not Appear To Apply PSD to GHG Sources (Presumptive SIP Call List)." If any of these States are not in a position to submit to EPA a corrective SIP revision by its deadline, EPA will promulgate a FIP that will provide authority to issue PSD permits for construction or modification of appropriate GHG sources in the State.

TABLE II–1—STATES WITH SIPS THAT DO NOT APPEAR TO APPLY PSD TO GHG SOURCES (PRESUMPTIVE SIP CALL LIST)

State (or area)	EPA region
Alaska	X
Arizona: Pinal County; Rest of State (Excludes Maricopa County, Pima County, and Indian Country)	IX
Arkansas	VI
California: Sacramento Metropolitan AQMD	IX
Connecticut	I
Florida	IV
Idaho	X
Kansas	VII
Kentucky: Jefferson County; Rest of State	IV
Nebraska	VII
Nevada: Clark County	IX
Oregon	X
Texas	VI

The rest of the States with approved SIP PSD programs (meaning each of those not listed in table II–1) are listed in table II–2, "States with SIPs that Appear to Apply PSD to GHG Sources (Presumptive Adequacy List)." For each of the States listed in table II–2 (as well as for any States with approved SIP PSD programs that we may have inadvertently omitted from table II–2), EPA is soliciting comment in the SIP Call companion notice on whether their SIPs do or do not apply the PSD program to GHG-emitting sources. We are not at this time proposing a FIP for the States listed in table II–2. However, if EPA concludes, on the basis of information EPA receives, that such a State's SIP does not apply the PSD program to GHG-emitting sources, then EPA will proceed to issue for that State a finding of substantial inadequacy and a SIP Call on the same schedule as for the States listed in table II–1 (the presumptive SIP Call list). If a SIP-called State is not able to submit to EPA a SIP revision that applies the PSD program to GHG sources by the deadline required in the SIP Call, then EPA proposes to promulgate a FIP without further notice and comment. The promulgated FIP will apply the PSD program to GHG sources in the State and provide PSD permitting authority for construction and modification of affected sources. Accordingly, interested parties in a State for which we, in the companion SIP Call rulemaking, solicit comment on the adequacy of its SIP to apply PSD to GHG-emitting sources should consider the comment period for the present notice to be their opportunity to comment on the FIP that EPA would implement in their State (should EPA ultimately determine to issue a SIP Call for their State in EPA's final action on the companion SIP Call rulemaking).

TABLE II–2—STATES WITH SIPS THAT APPEAR TO APPLY PSD TO GHG SOURCES (PRESUMPTIVE ADEQUACY LIST)

State (or area)	EPA region
Alabama: Jefferson County; Huntsville; Rest of State	IV
California: Mendocino County AQMD; Monterey Bay Unified APCD; North Coast Unified AQMD; Northern Sonoma County APCD	IX
Colorado	VIII
Delaware	III
Georgia	IV
Indiana	V
Iowa	VII
Louisiana	VI
Maine	I
Maryland	III
Michigan	V
Mississippi	IV
Missouri	VII
Montana	VIII
New Hampshire	I
New Mexico: Albuquerque; Rest of State	VI
North Carolina: Forsythe County; Mecklenburg; Western NC; Rest of State	IV
North Dakota	VIII
Ohio	V
Oklahoma	VI
Pennsylvania: All except Allegheny County	III
Rhode Island	I
South Carolina	IV

TABLE II–2—STATES WITH SIPS THAT APPEAR TO APPLY PSD TO GHG SOURCES (PRESUMPTIVE ADEQUACY LIST)—Continued

State (or area)	EPA region
South Dakota	VIII
Tennessee: Chattanooga; Nashville; Knoxville; Memphis; Rest of State	IV
Vermont	I
Virginia	III
West Virginia	III
Wisconsin	V
Wyoming	VIII
Utah	VIII

The background and context for this proposed rule is the same as for the proposed PSD GHG SIP Call and other actions cross-referenced in that action. Familiarity with the proposed PSD GHG SIP Call is presumed. As a result, the background and context for this rule will be only briefly summarized here.

B. CAA and Regulatory Context

1. SIP PSD Requirements

Under the CAA PSD requirements, a new or existing source that emits or has the potential to emit "any air pollutant" in specified quantities cannot construct or modify unless it first obtains a PSD permit that, among other things, imposes emission limitations that qualify as best available control technology (BACT). CAA sections 165(a)(1), 165(a)(4), 169(1). Longstanding EPA regulations have interpreted the term "any air pollutant" narrowly so that only emissions of any "regulated NSR pollutant" trigger PSD. 40 CFR 52.21(j)(2), (b)(50)(iv). The term "regulated NSR pollutant" is defined to include the following four classes of air pollutants:

(i) any pollutant for which a NAAQS has been promulgated;

(ii) any pollutant subject to an NSPS promulgated under CAA 111;

(iii) any pollutant subject to a standard promulgated under CAA title VI; and

(iv) "any pollutant that otherwise is subject to regulation under the Act" (excluding HAPs listed under CAA section 112).

The CAA contemplates that the PSD program be implemented in the first instance by the States. States are required to include PSD requirements in their SIPs. CAA section 110(a)(2)(C). Most States have PSD programs that have been approved into their SIPs, and these States implement their PSD program and act as the permitting authority. For the most part, these approved SIPs mirror EPA regulatory requirements, as found in 40 CFR 51.166 (except for the recently added revisions from the Tailoring Rule). As a result, most SIPs include the applicability requirement that PSD apply to sources that construct or modify and thereby increase their emissions of any "regulated NSR pollutant." A number of States do not have PSD programs approved into their SIPs; in those States, EPA's regulations at 40 CFR 52.21 govern, and either EPA or the State as EPA's delegatee acts as the permitting authority.

2. Recent EPA Regulatory Actions Concerning PSD Requirements for GHG-emitting Sources

Beginning on January 2, 2011, certain stationary sources that construct or undertake modifications will become subject to the CAA requirement to obtain a PSD permit for their GHG emissions. This is because of the following EPA regulatory actions.

By notice dated December 15, 2009, pursuant to CAA section 202(a), EPA issued, in a single final action, two findings [3] regarding GHGs that are commonly referred to as the "Endangerment Finding" and the "Cause or Contribute Finding." In the Endangerment Finding, EPA found that six long-lived and directly emitted GHGs—carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6)—may reasonably be anticipated to endanger public health and welfare. In the Cause or Contribute Finding, the Administrator "define[d] the air pollutant as the aggregate group of the same six * * * greenhouse gases," 74 FR 66536, and found that the combined emissions of this air pollutant from new motor vehicles and new motor vehicle engines contribute to the GHG air pollution that endangers public health and welfare.

By notice dated May 7, 2010, EPA published what is commonly known as the "Light-Duty Vehicle Rule" (LDVR),[4] which for the first time established Federal controls on GHGs, those emitted from light-duty vehicles. This rule specifies, in its applicability provisions, the air pollutant subject to control as the aggregate group of the six GHGs, including CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. 75 FR 25686 (40 CFR 86.1818–12(a)).

By notice dated April 2, 2010, EPA promulgated what is commonly known as the Johnson Memo Reconsideration.[5] The Johnson Memo Reconsideration interpreted one of the regulatory triggers for PSD applicability—the term "subject to regulation"—and concluded that promulgation of the LDVR would render GHGs "subject to regulation" and thereby trigger PSD applicability for GHG-emitting sources on January 2, 2011, which according to EPA is the date upon which the LDVR takes effect.

By notice dated June 3, 2010, EPA published what is commonly known as the "Tailoring Rule,"[6] which limits the applicability of PSD to certain GHG-emitting sources through a multi-step phase-in approach. In the Tailoring Rule, EPA established the first two steps of the phase-in approach as follows:

> For the first step of this Tailoring Rule, which will begin on January 2, 2011, PSD * * * requirements will apply to sources' GHG emission only if the sources are subject to PSD * * * anyway due to their non-GHG pollutants. [We call these sources "anyway sources."] Therefore, EPA will not require sources or modifications to evaluate whether they are subject to PSD * * * requirements solely on account of their GHG emissions.

[3] "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496.

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

[5] "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs" (75 FR 17004; April 2, 2010) (finalizing EPA response to petition for reconsideration of "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program" (commonly known as the "Johnson Memo"), December 18, 2008).

[6] "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule," 75 FR 31514.

Specifically, for PSD, Step 1 requires that as of January 2, 2011, the applicable requirements of PSD, most notably, the best available control technology (BACT) requirement, will apply to projects that increase net GHG emissions by at least 75,000 tpy carbon dioxide equivalent (CO_2e) but only if the project also significantly increase emissions of at least one non-GHG pollutant.

The second step * * * beginning on July 1, 2011, will phase in additional large sources of GHG emissions. New sources * * * that emit, or have the potential to emit, at least 100,000 tpy CO_2e will become subject to the PSD * * * requirements. In addition, sources that emit or have the potential to emit at least 100,000 tpy CO_2e and that undertake a modification that increases net emissions of GHGs by at least 75,000 tpy CO_2e will also be subject to PSD requirements. [We call this the 100,000/75,000 threshold.] For both steps, we note that if sources or modifications exceed these CO_2e-adjusted GHG triggers, they are not covered by permitting requirements unless their GHG emissions also exceed the corresponding mass-based triggers (*i.e.,* unadjusted for CO_2e.)

75 FR 31516. In the Tailoring Rule, EPA codified the Johnson Memo Reconsideration interpretation of the term "subject to regulation" and added a further interpretation of that term designed to expedite the adoption of the phase-in approach by the States into their SIPs. In addition, in the Tailoring Rule, EPA identified the air pollutant as the aggregate of the six GHGs, again, CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. The Tailoring Rule further provided that for purposes of determining whether the amount of GHG emissions exceeds specified thresholds and therefore triggers the application of PSD, the amount of emissions must be calculated on both a mass basis and, as alluded to above, a carbon dioxide equivalent (CO_2e) basis. With respect to the latter, according to the rule, "PSD * * * applicability is based on the quantity that results when the mass emissions of each of these gases is multiplied by the Global Warming Potential (GWP) of that gas, and then summed for all six gases." 75 FR 31518.

Further information on the applicable CAA provisions, the Endangerment and Cause or Contribute Findings, the LDRV, the Johnson Memo Reconsideration, and the Tailoring Rule is contained in the Tailoring Rule and the proposed PSD GHG SIP Call.

We note that in this rulemaking we are not addressing the issue of accounting for emissions of GHGs from bioenergy and other biogenic sources (which are generated during the combustion or decomposition of biologically based material such as forest or agriculture products). When we finalized the Tailoring Rule, we noted that EPA planned to seek comment on how to address emissions of biogenic CO_2 under the PSD and title V programs through future action, such as a separate Advance Notice of Proposed Rulemaking (ANPR) (75 FR at 31591). As a first step, we recently issued a Call for Information (CFI) to solicit public comment and data on technical issues that might be used to consider biomass fuels and the emissions resulting from their combustion differently with regard to applicability under PSD and with regard to the BACT review process under PSD. See "Call for Information: Information on Greenhouse Gas Emissions Associated with Bioenergy and Other Biogenic Sources," 75 FR 41173 (July 15, 2010).

Additional information on this CFI is available at *http://www.epa.gov/climatechange/emissions/biogenic_emissions.html.* In the CFI we stated: "In response to this Call for Information, interested parties are invited to assist EPA in the following: (1) Surveying and assessing the science by submitting research studies or other relevant information, and (2) evaluating different accounting approaches and options by providing policy analyses, proposed or published methodologies, or other relevant information. Interested parties are also invited to submit data or other relevant information about the current and projected scope of GHG emissions from bioenergy and other biogenic sources." 75 FR at 41174.

Without prejudging the outcome of the CFI process, EPA anticipates that the comments we receive in response to the CFI, with regard to applicability under PSD and with regard to the BACT review process under PSD, will inform any subsequent actions to address applicability of emissions of GHGs from bioenergy and other biogenic sources under the PSD program.

C. SIP Inadequacy and Corrective Action; Federal Implementation Plans

The CAA provides a mechanism for the correction of SIPs that are inadequate, under CAA section 110(k)(5), which provides:

> (5) Calls for plan revisions
>
> Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to * * * comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions.

This provision by its terms authorizes the Administrator to "find[] that [a SIP] * * * is substantially inadequate to * * * comply with any requirement of this Act," and, based on that finding, "require the State to revise the [SIP] * * * to correct such inadequacies." This latter action is commonly known as a "SIP call." In addition, this provision provides that EPA must notify the State of the inadequacies 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 the State fails to submit the corrective SIP revision by the deadline, CAA section 110(c) authorizes EPA to "find[] that [the] State has failed to make a required submission." CAA section 110(c)(1)(A). Once EPA makes that finding, CAA section 110(c)(1) requires EPA to "promulgate a Federal implementation plan at any time with 2 years after the [finding] * * * unless the State corrects the deficiency, and [EPA] approves the plan or plan revision, before [EPA] promulgates such [FIP]."

D. States That Do Not Appear To Apply the PSD Program to GHG Sources; PSD GHG SIP Call

A number of States do not have an approved PSD SIP; as a result, in these States [7] the applicable regulatory authority is EPA's regulations, found in 40 CFR 52.21, which constitute a FIP. For sources in these States, either the EPA Regional Office or the State acting as EPA's delegatee is the permitting authority. In these States, EPA's regulations apply directly. As a result, the regulations apply the PSD program to any constructing or modifying source that emits the requisite quantity of any "regulated NSR pollutant," 40 CFR 52.21(b)(50), which includes any "pollutant subject to regulation," which, in turn, as discussed earlier in this preamble, will cover GHG emissions on January 2, 2011.

All of the other States administer their PSD programs through an approved SIP and, as a result, they or their local

[7] In the following listed State or local jurisdictions, as well as in all Indian country, EPA is the PSD permitting authority, implementing the Federal PSD regulation at 40 CFR 52.21: American Samoa; Arizona (some areas); California (most areas); District of Columbia; Guam; Massachusetts; New Jersey; New York; Northern Mariana Islands; Puerto Rico; Trust Territories; and the Virgin Islands. In a smaller number of areas, listed as follows, the State or local permitting authority is delegated at least partial authority by EPA to implement the Federal PSD regulation: Arizona (some areas); California (some areas); Hawaii; Illinois; Minnesota; Nevada (most areas); Pennsylvania (some areas); and Washington.

entities are the PSD permitting authority. Of these States, most appear to have SIP PSD applicability provisions that parallel EPA's regulatory PSD applicability provisions and therefore apply PSD to any stationary source that emits the requisite amount of any air pollutant "subject to regulation." As a result, and absent any other provision under State law that limits the applicability of these provisions, these PSD SIPs will cover GHG sources, just as the current FIPs do, in these States, on and after January 2, 2011. Therefore, these States or local authorities will be able to act as the permitting authority for GHG sources in their States.

As discussed in the PSD GHG SIP Call, it appears, on the basis of preliminary research and information received that for 13 of the States with approved PSD SIPs, the PSD programs do not apply to GHG-emitting sources. In many of these SIPs, the PSD applicability provisions do not mirror EPA's regulatory provisions by applying PSD requirements to sources of any air pollutant "subject to regulation." Instead, the applicability provisions specifically list the air pollutants to which the PSD program applies and do not include GHGs on that list. Although, as discussed in the proposed PSD GHG SIP Call, these SIPs may have other provisions that provide the State with general authority to issue permits that meet CAA requirements, until EPA receives more information, we will proceed on the basis that these SIPs do not apply their PSD programs to GHG sources. Also as discussed in the proposed SIP Call, the State of Connecticut explicitly excludes GHGs from the State PSD program. In addition, as discussed in the proposed SIP Call, some States with SIP PSD applicability provisions that do mirror EPA's regulatory provisions by applying PSD requirements to sources of any air pollutant "subject to regulation" nevertheless do not appear to apply PSD to GHG-emitting sources because these States have other State law constraints against applying State law or SIP requirements without specific State action authorizing such application of law.

In the SIP Call, EPA proposed to find the SIPs for these 13 States to be substantially inadequate, and EPA proposed a SIP Call under CAA section 110(k)(5). EPA stated that it intends to finalize the finding of substantial inadequacy and the SIP Call by December 1, 2010. EPA further stated that it would allow States 12 months from the date of signing the finding and the SIP Call for States to submit their corrective SIP revisions, but that States could indicate to EPA that they do not object to a shorter deadline, and in that event EPA would impose that shorter deadline.

In the proposed SIP Call, EPA also solicited comment on whether the approved SIPs for those other States (listed in table II–2 of this preamble, for which EPA was not proposing a SIP Call) do or do not apply their PSD programs to GHG-emitting sources. EPA asked the other States to review their SIPs and, if their SIPs fail to apply PSD to GHG-emitting sources, advise EPA by the end of the comment period of the State's inadequacy and also inform EPA if they do not object to a shorter deadline for submittal of the required corrective SIP revision.

In the proposed SIP Call, we stated that the required corrective SIP revision could constitute a simple addition of GHGs to the list of pollutants subject to PSD applicability, with GHGs defined as the aggregate of six pollutants—CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6.

III. Proposed Federal Implementation Plan

In this rulemaking, we propose a FIP, under CAA section 110(c)(1)(A), for any State—if ultimately there is any—for which we issue a finding of failure to submit a SIP submission required under the PSD GHG SIP Call.

A. Timing for FIP

If any of the States for which we issue the SIP Call does not meet its SIP submittal deadline, we will immediately issue a finding of failure to submit a required SIP submission, under CAA section 110(c)(1)(A), and immediately thereafter promulgate a FIP for the State. This timing for FIP promulgation is authorized under CAA section 110(c)(1), which authorizes us to promulgate a FIP "at any time within 2 years after" finding a failure to submit a required SIP submission. We intend to 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.

After we have promulgated a FIP, it must remain in place until the State submits a SIP revision and we approve that SIP revision. CAA section 110(c)(1). Under the present circumstances, we will act on a SIP revision to apply the PSD program to GHG sources as quickly as possible. Upon request of the State, we will parallel-process the SIP submittal. That is, if the State submits to us the draft SIP submittal for which the State intends to hold a hearing, we will propose the draft SIP submittal for approval and open a comment period during the same time as the State hearing. If the SIP submittal that the State ultimately submits to us is substantially similar to the draft SIP submittal, we will proceed to take final action without a further proposal or comment period. If we approve such a SIP revision, we will at the same time rescind the FIP.

B. Substance of FIP

The proposed FIP constitutes the EPA regulations found in 40 CFR 52.21, including the PSD applicability provisions, with a limitation to assure that, strictly for purposes of this rulemaking, the FIP applies only to GHGs. Under the PSD applicability provisions in 40 CFR 52.21(b)(50), the PSD program applies to sources that emit the requisite amounts of any "regulated NSR pollutant[s]," including any air pollutant "subject to regulation." However, in States for which EPA would promulgate a FIP to apply PSD to GHG-emitting pollutants, the approved SIP already applies PSD to other air pollutants. To appropriately limit the scope of the FIP, EPA proposes in this action to amend 40 CFR 52.21(b)(50) to limit the applicability provision to GHGs.

We propose this FIP because it would, to the greatest extent possible, mirror EPA regulations (as well as those of most of the States). In addition, this FIP would readily incorporate the phase-in approach for PSD applicability to GHG sources that EPA has developed in the Tailoring Rule and expects to develop further through additional rulemaking. As explained in the Tailoring Rule, incorporating this phase-in approach—including Steps 1 and 2 of the phase-in as promulgated in the Tailoring Rule—can be most readily accomplished through interpretation of the terms in the definition "regulated NSR pollutant," including the term "subject to regulation."

In accordance with the Tailoring Rule, as described earlier in this preamble, the FIP would apply in Step 1 of the phase-in approach only to "anyway sources" (that is, sources undertaking construction or modification projects that are required to apply for PSD permits anyway due to their non-GHG emissions and that emit GHGs in the amount of at least 75,000 tpy on a CO_2e basis) and would apply in Step 2 of the phase-in approach to both "anyway sources" and sources that meet the 100,000/75,000-tpy threshold (that is, (i) sources that newly construct and would not be subject to PSD on account

of their non-GHG emissions, but that emit GHGs in the amount of at least 100,000 tpy CO_2e, and (ii) existing sources that emit GHGs in the amount of at least 100,000 tpy CO_2e, that undertake modifications that would not trigger PSD on the basis of their non-GHG emissions, but that increase GHGs by at least 75,000 tpy CO_2e).

Under the FIP, with respect to permits for "anyway sources," EPA will be responsible for acting on permit applications for only the GHG portion of the permit, and the State will retain responsibility for the rest of the permit. Likewise, with respect to permits for sources that meet the 100,000/75,000-tpy threshold, our preferred approach—for reasons of consistency—is that EPA will be responsible for acting on permit applications for only the GHG portion of the permit, that the State permitting authorities will be responsible for the non-GHG portion of the permit, and EPA will coordinate with the State permitting authority as needed in order to fully cover any non-GHG emissions that, for example, are subject to BACT because they exceed the significance levels. We recognize that questions may arise as to whether the State permitting authorities have authority to permit non-GHG emissions; as a result, we solicit comment on whether EPA should also be the permitting authority for the non-GHG portion of the permit for these latter sources.

We propose that the FIP consist of the regulatory provisions included in 40 CFR 52.21, except that the applicability provision would include a limitation so that it applies for purposes of this rulemaking only to GHGs.

C. Primacy of the SIP Process

This proposal is secondary to our overarching goal, which is to assure that in every instance, it will be the State that will be that permitting authority. EPA continues to recognize that the States are best suited to the task of permitting because they and their sources have experience working together in the State PSD program to process permit applications. EPA seeks to remain solely in its primary role of providing guidance and acting as a resource for the States as they make the various required permitting decisions for GHG emissions.

Accordingly, beginning immediately we intend to work closely with the States—as we have already begun to do since earlier in the year—to help them promptly develop and submit to us their corrective SIP revisions that extend their PSD program to GHG-emitting sources. Moreover, we intend to promptly act on their SIP submittals. Again, EPA's goal is to have each and every affected State have in place the necessary permitting authorities by the time businesses seeking construction permits need to have their applications processed and the permits issued—and to achieve that outcome by means of engaging with the States directly through a concerted process of consultation and support.

EPA is taking up the additional task of proposing this FIP and the companion SIP Call action only because the Agency believes it is compelled to do so by the need to assure businesses, to the maximum extent possible and as promptly as possible, that a permitting authority is available to process PSD permit applications for GHG-emitting sources once they become subject to PSD requirements on January 2, 2011.

In order to provide that assurance, we are obligated to recognize, as both States and the regulated community already do, that there may be circumstances in which States are simply unable to develop and submit those SIP revisions by January 2, 2011, or for some period of time beyond that date. As a result, absent further action by EPA, those States' affected sources confront the risk that they may have to put on hold their plans to construct or modify, a risk that may have adverse consequences for the economy.

Given these exigent circumstances, EPA proposes this plan, within the limits of our power, with the intent to make a back-up permitting authority available—and to send a signal of assurance expeditiously in order to reduce uncertainty and thus facilitate businesses' planning. Within the design of the CAA, it is EPA that must fill that role of back-up permitting authority. This FIP and the companion SIP Call action fulfill the CAA requirements to establish EPA in that role.

At the same time, we propose these actions with the intent that States retain as much discretion as possible in the hand of the States. In the SIP Call rulemaking, EPA proposes that States may choose the deadline they consider reasonable for submission of their corrective SIP revision. If, under CAA requirements, we are compelled to promulgate a FIP, we invite the affected State to accept a delegation of authority to implement that FIP, so that it will still be the State that processes the permit applications, albeit operating under Federal law. In addition, if we are compelled to issue a FIP, we intend to continue to work closely with the State to assist in developing and submitting for approval its corrective SIP revision, so as to minimize the amount of time that the FIP must remain in place.

Finally, we can report that in informal conversations, officials of various States have acknowledged the need for our SIP Call and FIP actions. That is, they have acknowledged that a short-term FIP may be necessary in their States to establish permitting authority to construct and modify in accordance with environmental safeguards for these sources. In addition, some States have indicated that they will closely consider their opportunities to accept delegation of the permitting responsibilities.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action imposes new information collection burden. The action is based on information concerning whether the States have authority to regulate GHGs under their SIP PSD provisions, which information is already requested of the States in the Tailoring Rule. The 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.

The Tailoring Rule does not establish any new requirements (either control or reporting) for any sources. It merely establishes the thresholds that trigger NSR and title V for GHG sources. The trigger for GHG and title V is not due to the Tailoring Rule but the result of the endangerment finding and the LDVR. The NSR and title V ICRs will need to be modified to include the new sources that will be triggered due to the GHG requirements (in July 2011). The Agency anticipates making such modifications upon renewal of the NSR and title V ICRs at the end of the year.

C. 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 or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this notice on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (*see* 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Although this rule would lead to Federal permitting requirements for certain sources, those sources are large emitters of GHGs and tend to be large sources. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, 2 U.S.C. 1531–1538) for State, local or tribal governments or the private section. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. This action merely prescribes EPA's action for States that do not meet their existing obligation for PSD SIP submittal. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action merely prescribes EPA's action for States that do not meet their existing obligation for PSD SIP submittal.

E. 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 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 solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not impose a FIP in any tribal area. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this proposed rule, EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it merely prescribes EPA's action for States that do not meet their existing obligation for PSD SIP submittal.

H. 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 likely to have a significant adverse effect on the supply, distribution, or use of energy. This action merely prescribes EPA's action for States that do not meet their existing obligation for PSD SIP submittal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 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 the U.S.

EPA has determined that this proposed 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 proposed rule merely prescribes EPA's action for States that do not meet their existing obligation for PSD SIP submittal.

K. Determination Under Section 307(d)

Pursuant to sections 307(d)(1)(B) of the CAA, this action is subject to the provisions of section 307(d). Section 307(d)(1)(B) provides that the provisions of section 307(d) apply to "the promulgation or revision of an implementation plan by the Administrator under section 110(c) of this Act."

V. Statutory Authority

The statutory authority for this action is provided by sections 110, 165, 301, and 307(d)(1)(B) of the CAA as amended (42 U.S.C. 7410, 7475, 7601, and 7407(d)(1)(B)). This action is subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

Page 46 of 49—Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Carbon monoxide, Greenhouse gases, Hydrofluorocarbons, Intergovernmental relations, Lead, Methane, Nitrogen dioxide, Nitrous oxide, Ozone, Particulate matter, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride, Sulfur oxides, Volatile organic compounds.

Dated: August 12, 2010.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be 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.*

2. Section 52.37 is added to read as follows:

§ 52.37 What are the requirements of the Federal Implementation Plans (FIPs) to issue permits under the Prevention of Significant Deterioration requirements to sources that emit greenhouse gases?

(a) The requirements of sections 160 through 165 of the Clean Air Act are not met to the extent the plan, as approved, of the States listed in paragraph (b) of this section does not apply with respect to emissions of the pollutant GHGs from certain stationary sources. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby made a part of the plan for each State listed in paragraph (b) of this section for: (1) Beginning January 2, 2011, the pollutant GHGs from stationary sources described in § 52.21(b)(49)(iv), and [Alternative 1 for paragraph (a)(2)]

(2) Beginning July 1, 2011, in addition to the pollutant GHGs from sources described under paragraph (a)(1) of this section, the pollutant GHGs from stationary sources described in § 52.21(b)(49)(v). [Alternative 2 for paragraph (a)(2)]

(2) Beginning July 1, 2011, in addition to the pollutant GHGs from sources described under paragraph (a)(1) of this section, stationary sources described in § 52.21(b)(49)(v).

(b) Paragraph (a) of this section applies to:

(1) Alaska;

(2) Arizona, Pinal County; Rest of State (Excludes Maricopa County, Pima County, and Indian Country);

(3) Arkansas;

(4) California, Sacramento Metropolitan AQMD;

(5) Connecticut;

(6) Florida;

(7) Idaho;

(8) Kansas;

(9) Kentucky, Jefferson County and Rest of State;

(10) Nebraska;

(11) Nevada, Clark County;

(12) Oregon;

(13) Texas.

(c) For purposes of this section, references to the "pollutant GHGs" refers to the pollutant GHGs, as described in § 52.21(b)(49)(i).

[FR Doc. 2010–21706 Filed 9–1–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2010–0107; FRL–9190–7]

RIN–2060–AQ08

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to find that 13 States with EPA-approved State implementation plan (SIP) New Source Review Prevention of Significant Deterioration (PSD) programs are substantially inadequate to meet Clean Air Act (CAA) requirements because they do not appear to apply PSD requirements to GHG-emitting sources. For each of these States, EPA proposes to require the State (through a "SIP Call") to revise its SIP as necessary to correct such inadequacies. EPA proposes an expedited schedule for States to submit their corrective SIP revision, in light of the fact that as of January 2, 2011, certain GHG-emitting sources will become subject to the PSD requirements and may not be able to obtain a PSD permit in order to construct or modify. As for the rest of the States with approved SIP PSD programs, EPA solicits comment on whether their PSD programs do or do not apply to GHG-emitting sources. If, on the basis of information EPA receives, EPA concludes that the SIP for such a State does not apply the PSD program to GHG-emitting sources, then EPA will proceed to also issue a finding of substantial inadequacy and a SIP Call for that State.

DATES: *Comments.* Comments must be received on or before October 4, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0107 by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2010–0107, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Mail code: 6102T, Washington, DC 20460. Please include a total of 2 copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, NW., Room 3334, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2010–0107. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0107. 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 whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The