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Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3, GHG Plantwide Applicability Limitations and GHG Synthetic Minor Limitations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 70 and 71

[EPA–HQ–OAR–2009–0517; FRL–9643–8]

RIN 2060–AR10

Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3, GHG Plantwide Applicability Limitations and GHG Synthetic Minor Limitations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposal concerns the third step (Step 3) in the EPA's Tailoring Rule. We are proposing to maintain the applicability thresholds for greenhouse gas (GHG)-emitting sources at the current levels. We are also proposing two streamlining approaches, which will improve the administration of GHG Prevention of Significant Deterioration (PSD) and title V permitting programs. The first proposal addresses the implementation of GHG plantwide applicability limitations (PALs). We propose to allow permitting authorities to issue GHG PALs on either a mass-basis (tpy) or a carbon dioxide equivalent (CO_2e)-basis and to allow PALs to be used as an alternative approach for determining whether a project is a major modification and whether GHG emissions are subject to regulation. The second proposal would create the regulatory authority for the EPA to issue synthetic minor limitations for GHGs in areas subject to a GHG PSD Federal Implementation Plan (FIP). We also discuss our progress in evaluating the suitability of other streamlining approaches and solicit further comment.

DATES: Comments must be received on or before April 20, 2012.

Public Hearing. One public hearing will be held on March 20, 2012. For additional instructions on the public hearing, go to the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0517, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Attention Docket ID No. EPA–HQ–OAR–2009–0517.
- *Fax:* (202) 566–9744.
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2009–0517, Air and Radiation Docket and Information Center, Mailcode: 2822T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two 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, Attn: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.
- *Hand Delivery:* Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2009–0517. Such deliveries are only accepted during the Docket Center'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–2009–0517. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the 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 the EPA without going through *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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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 *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue 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 and Radiation Docket and Information Center is (202) 566–1742.

Public Hearing: One public hearing will be held on this proposed rule. The hearing will be held on March 20, 2012, at the DoubleTree Hotel—Crystal City, 300 Army Navy Drive, Arlington, Virginia 22202; phone number (703) 416–4100. The public hearing will convene at 10 a.m. and continue until 7 p.m. (local time) or later, if necessary, depending on the number of speakers wishing to participate. The EPA will make every effort to accommodate all speakers that are registered and arrive before 7 p.m. A lunch break is scheduled from 1 p.m. until 2 p.m. and a thirty minute break is scheduled from 4:30 p.m. until 5 p.m. during the hearing. The EPA Web site for the rulemaking, which includes the proposal and information about the public hearing, can be found at: *www.epa.gov/nsr.*

FOR FURTHER INFORMATION CONTACT: Michael S. Brooks, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–3539; fax number (919) 541–5509; email address: *brooks.michaels@epa.gov.* The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed rules. Persons interested in presenting oral testimony should notify Ms. Long at least 1 day in advance of the public hearing. To register to speak, attend or for information pertaining to the public hearing on this document, contact Ms. Pamela S. Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–0641; fax number (919) 541–5509; email address: *long.pam@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this **SUPPLEMENTARY**

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I. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

The purpose of this ''Step 3'' rule is to continue the process of phasing in GHG permitting requirements under the PSD and title V programs begun in Steps 1 and 2 of the Tailoring Rule.[1] As a result of actions to regulate GHGs under other Clean Air Act (CAA or ''the Act'') programs, GHGs are required to be addressed under the major source permitting requirements of the Act's PSD and title V programs. The Tailoring Rule is necessary because the statutory definitions that have been used for other air pollutants to determine which sources are ''major sources'' subject to permitting under these programs are based on annual emission rates of 100 or 250 tpy which, if implemented immediately for GHGs, would bring so many sources into the programs as to overwhelm the capabilities of state permitting authorities to issue permits and potentially impede the ability of sources to construct or modify their facilities.

To prevent this outcome, the EPA promulgated the Tailoring Rule to create a higher major source threshold for GHGs. In the Tailoring Rule, we explained that ''[t]hese impacts * * * are so severe that they bring the judicial doctrines of 'absurd results,' 'administrative necessity,' and 'one-step-at-a-time' into the *Chevron* two-step analytical framework for statutes administered by agencies.'' Tailoring Rule, 75 FR at 31517. We further explained that on the basis of this legal interpretation, we would phase-in the applicability of PSD and title V to GHG-emitting sources so that those requirements would apply ''at least to the largest sources initially, at least to as many more sources as possible and as promptly as possible over time * * * and at least to a certain point.'' *Id.* In the Tailoring Rule, we went on to promulgate the first two steps of the phase-in program, which we call Steps 1 and 2, and we made commitments for subsequent action.

Under Step 1 of the Tailoring Rule, which began on January 2, 2011, sources above the GHG threshold that are required to obtain a PSD or title V permit anyway due to emissions of other pollutants (referred to as ''anyway'' sources) are required also to address their GHG emissions in the permit. Under Step 2, which became effective on July 1, 2011, sources with

[1] ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule,'' 75 FR 31,514 (June 3, 2010) (the Tailoring Rule).

GHG emissions above the Tailoring Rule threshold also are required to obtain a PSD or title V permit, even if they would not be subject to these programs based on emissions of other pollutants.

In the Tailoring Rule, the EPA also committed to this Step 3 rulemaking. For this rulemaking we have evaluated whether it is now possible to lower the GHG major source threshold to bring additional sources into the CAA permitting programs without overwhelming state permitting authorities. In addition, we have continued our identification and evaluation of potential approaches to streamline permitting so as to enable permitting authorities to permit more GHG-emitting sources without undue burden. The specific actions being proposed today are briefly described in the following paragraphs.

2. Summary of Major Provisions

The EPA is proposing to leave the GHG major source thresholds unchanged from the Step 2 level at this time. We have found that the capabilities of the state permitting authorities have not improved to the extent necessary for additional sources to be brought into the system. This proposal is discussed further in section V of this preamble.

We are also proposing to revise the PSD regulations to provide for GHG PALs. A PAL establishes a site-specific plantwide emission level for a pollutant that allows the source to make changes at the facility without a PSD permit, provided that emissions to not exceed the PAL level. Such PALs are already available under PSD for other pollutants, and we are proposing to create provisions to allow for GHG PALs as well. We believe that this action will streamline PSD permitting programs by allowing sources and permitting authorities to address GHGs one time for a source and avoid repeated subsequent permitting actions. This action is discussed further in section VI.A of this preamble.

We are proposing regulatory provisions as well to allow for ''synthetic minor'' permits for GHGs under the federal PSD program. Applicability under PSD and title V is triggered when a source ''emits, or has the potential to emit'' a pollutant at a level greater than the major source threshold. Under this system, there are some sources that have the potential to emit a pollutant above the threshold (*e.g.,* if the source were to operate 24 hours per day, 7 days per week), but do not have actual emissions above the threshold, due to physical or operational limitations, and do not plan to ever have emissions that great. The EPA has long allowed for such sources to voluntarily accept enforceable limits on their emissions to keep them below the major source threshold; such sources are referred to as ''synthetic minor'' sources. However, synthetic minor permits are typically issued by states under their minor source NSR programs, and there is no generally applicable federal minor NSR program. To allow for issuance of synthetic minor permits for GHGs in all areas subject to the federal PSD program, we are proposing to add GHG synthetic minor provisions to the federal PSD program. We believe that permitting synthetic minor GHG sources under these provisions will reduce the number of sources subject to PSD and title V, reducing the burden on state permitting authorities and the sources. This action is discussed further in section VI.B of this preamble.

B. Does this action apply to me?

Entities affected by this action include sources in all sectors of the economy, including commercial and residential sources. Entities potentially affected by this action also include states, local permitting authorities and tribal authorities. The majority of categories and entities potentially affected by this action are expected to be in the following groups:

Industry group	NAICS [a]
Agriculture, fishing, and hunting	11
Mining	21
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
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.

C. 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 proposed rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this proposed rule will be posted in the regulations and standards section of our New Source Review (NSR) Web site, under Regulations & Standards, at *http://www.epa.gov/nsr.*

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

1. Submitting CBI

Do not submit this information to the EPA through *www.regulations.gov* or email. 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 the 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), Environmental Protection Agency, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2009–0517.

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.

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

Persons interested in presenting oral testimony should contact Ms. Pamela Long, Air Quality Policy Division (C504–01), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number (919) 541–0641 or email *long.pam@epa.gov* at least 1 day 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 these proposed rules.

F. What acronyms, abbreviations and units are used in this preamble?

The following acronyms, abbreviations and units are used in this preamble:

AFUE	Annual Fuel Utilization Efficiency
BACT	Best Available Control Technology
CAA or Act.	Clean Air Act
CFR	Code of Federal Regulations
CH_4	Methane
CO_2	Carbon Dioxide
CO_2e	Carbon Dioxide Equivalent
DOE	U.S. Department of Energy
EPA	U.S. Environmental Protection Agency
ECOS	Environmental Council of the States
FIP	Federal Implementation Plan
FR	Federal Register
GHG	Greenhouse Gas
GP	General Permit
GWP	Global Warming Potential
HFCs	Hydrofluorocarbons
ICR	Information Collection Request
LDVR	Light-Duty Vehicle Rule
N_2O	Nitrous Oxide
NAAQS	National Ambient Air Quality Standard
NACAA	National Association of Clean Air Agencies
NRDC	Natural Resources Defense Council
NSR	New Source Review
NTTAA	National Technology Transfer and Advancement Act
OMB	Office of Management and Budget
PAL	Plantwide Applicability Limitation
PFCs	Perfluorocarbons
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
RFA	Regulatory Flexibility Act
SBA	Small Business Administration
SF_6	Sulfur Hexafluoride
SIP	State Implementation Plan
SNPR	Supplemental Notice of Proposed Rulemaking
TSD	Technical Support Document
tpy	Tons Per Year
UMRA	Unfunded Mandates Reform Act

II. Overview of the Proposed Rule

In the Tailoring Rule, we included an enforceable commitment to propose or solicit comment on what we call Step 3 of the process for phasing in, or tailoring, the applicability thresholds at which GHG emission sources are subject to the CAA PSD and title V permitting requirements. We also stated in that rule that we would lower the Tailoring Rule thresholds only after we determined that the states have had enough time to develop the necessary infrastructure and increase their GHG permitting expertise and capacity to efficiently manage the expected increase in administrative burden, and only after we had the opportunity to expedite GHG permit issuance through streamlining measures. In addition, in the Tailoring Rule, we committed to complete action on the Step 3 rulemaking by July 1, 2012, and to make the Step 3 rule effective on July 1, 2013. In the short period of time since the EPA promulgated the Tailoring Rule, the states and we have made progress in GHG permitting capacity and streamlining in some areas, but not enough to justify lowering the thresholds at this time. As a result, in this rulemaking, we propose to maintain Step 3 of the Tailoring Rule at current levels.

In section III of this proposal, we discuss background information, including the potential numbers of permit actions, amounts of GHG emissions, and administrative costs of permit actions for the sources that are potentially subject to GHG permitting for Step 3.

In section IV, we discuss the available information regarding the impact that GHG permitting is having on permitting authorities. In section V, we discuss our proposal to maintain the current applicability requirements for GHG PSD and title V permitting at the levels established under Steps 1 and 2 of the Tailoring Rule—which are the first two steps in the Tailoring Rule's phase-in program for PSD and title V applicability—which we generally refer to as the 100,000/75,000 levels. Our basis for maintaining the current applicability requirements stems from the Tailoring Rule itself, in which we determined that with the Step 1 and 2 thresholds, permitting authorities would be required to handle a large number of GHG permitting actions that would impose significant administrative burdens on the permitting authorities, and that lowering those thresholds in Step 3 would bring in more permitting actions that in turn would add more burden. Accordingly, we stated we would lower the GHG thresholds only if certain criteria are met. The criteria are: (i) The development of what we call streamlining measures that would make GHG permitting more efficient, (ii) whether permitting authorities had the

time needed to ramp up their resources, and (iii) the ability of sources to meet the requirements of the PSD program and the permitting authorities' ability to issue timely permits.[2] Information currently available indicates that the permitting authorities are not significantly better positioned now to process more GHG permits than they were at the time we promulgated Steps 1 and 2 in the Tailoring Rule. We also note that lowering the thresholds to include the relatively low-emitting sources currently under consideration for Step 3 would result in a very small addition to the amount of GHG emissions subject to permitting requirements while potentially adding thousands of sources to the permitting process. For these reasons, we propose in Step 3 to maintain, and not lower, the current applicability thresholds.

As we committed to do in the Tailoring Rule, we have been exploring a variety of approaches that could be used to streamline PSD and title V permitting for sources of GHGs. In section VI, we discuss streamlining techniques with the potential to make the PSD and title V permitting programs more efficient to administer for GHG-emitting sources, and propose two streamlining techniques. In section VI.A, we propose to add provisions to the PSD regulations at 40 CFR 51.166 and 52.21 to better address PALs for GHGs. More specifically, we propose regulatory changes to implement GHG PALs on either a mass-basis (tpy) or a CO_2e-basis, including for existing sources that are not yet currently major for any regulated NSR pollutants and are not major sources because of their GHG emissions, and we also propose allowing PALs to be used as an alternative approach for determining both whether a project is a major modification and whether GHG emissions are subject to regulation. In section VI.B, we propose to add provisions to the PSD regulations at 40 CFR 52.21 to create GHG synthetic minor source permitting authority, in areas subject to a GHG PSD FIP. In doing so, we propose changes to create the regulatory authority for the EPA to issue synthetic minor limitations for GHG emissions to allow sources to restrict emissions below the PSD applicability thresholds. A synthetic minor limit may also allow sources to restrict emissions below the title V permitting applicability threshold on a source-wide basis. We also request comment on whether any states with approved SIPs lack authority to issue GHG synthetic minor limitations.

In the rest of section VI, we discuss our progress in evaluating the suitability of other streamlining options and request further comment, for the purposes of both PSD and title V permitting, on potential-to-emit calculations and the use of general permits; and for PSD permitting, on the use of presumptive best available control technology (BACT).

In section VII, we solicit comment on the full range of topics discussed in this proposal. In addition, we call for additional information from states as to their current and expected air permit budgets as well as their current and expected future levels of permitting based on the current thresholds and the possibility of lower thresholds in the future.

III. Background

This section describes key aspects of the background for this rulemaking. For other background information, such as a description of GHGs and their sources, the regulatory backdrop to the Tailoring Rule, and the EPA's GHG PSD and title V programs, *see* the Tailoring Rule, the related actions that the EPA took shortly before finalizing the Tailoring Rule,[3] and the GHG PSD and title V implementation rules that we call the GHG PSD SIP Call and GHG FIP,[4] as well as the GHG PSD and title V Narrowing Rules.[5] For purposes of this proposal, we assume that the reader is familiar with the above-referenced materials. In the following paragraphs we provide a brief summary of key statutory and regulatory background for the PSD permit and title V programs.

A. Statutory and Regulatory Background for PSD and Title V

Under the CAA, new major stationary sources of certain air pollutants, defined as ''regulated NSR pollutants,'' and major modifications to existing major sources are required to, among other things, obtain a PSD permit prior to construction or major modification. We refer to the set of requirements that determine which sources and modifications are subject to PSD as the ''applicability'' requirements. Once major sources become subject to PSD, these sources must, in order to obtain a PSD permit, meet the various PSD requirements. For example, they must apply BACT, demonstrate compliance with air quality related values and PSD increments, address impacts on special Class I areas (*e.g.,* some national parks and wilderness areas), and assess impacts on soils, vegetation, and visibility. These PSD requirements are the subject of Sections III and IV of this document.

In this section, we discuss how the CAA and relevant EPA regulations describe the PSD applicability requirements. The CAA applies the PSD requirements to any ''major emitting facility'' that constructs (if the facility is new) or undertakes a modification (if the facility is an existing source).[6] The term ''major emitting facility'' is defined as a stationary source that emits, or has a PTE of, at least 100 TPY, if the source is in one of 28 listed source categories, or, if the source is not, then at least 250 TPY, of ''any air pollutant.'' 42 U.S.C. 7479(1). For existing facilities, the CAA adds a definition of modification, which, in general, is any physical or

[2] 75 FR 31559.

[3] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act,'' 74 FR 66,496 (December 15, 2009) (the Endangerment and Cause-or-Contribute Findings); ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule,'' 75 FR 25,324 (May 7, 2010) (the Light-duty Vehicle Rule); ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs,'' 75 FR 17,004 (April 2, 2010) (the Timing Decision or the Johnson Memo Reconsideration). In the ''Endangerment Finding,'' which is governed by CAA section 202(a) in December 2009 the Administrator exercised her judgment to conclude that ''six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations.'' The Administrator also found ''that the combined emissions of these greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas air pollution that endangers public health and welfare under CAA section 202(a).'' 74 FR 66496. This Endangerment Finding led directly to promulgation of what we call the ''Light-duty Vehicle Rule'' or the ''LDVR,'' also governed by CAA section 202(a), in which EPA set standards for the emission of greenhouse gases for new motor vehicles built for model years 2012–2016. The Johnson Memo Reconsideration provided EPA's interpretation of a pre-existing definition in its PSD regulations delineating the ''pollutants'' that are taken into account in determining whether a source must obtain a PSD permit and the pollutants each permit must control. Regarding the Vehicle Rule, the Johnson Memo Reconsideration stated that such regulations, when they take effect on January 2, 2011, will, by operation of the applicable CAA requirements, subject GHG-emitting sources to PSD requirements.

[4] ''Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Final Rule,'' 75 FR 77,698 (December 13, 2010) (the GHG PSD SIP Call); ''Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan; Final Rule,'' 75 FR 82246 (December 30, 2010) (the GHG PSD SIP Call FIP).

[5] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule,'' 75 FR 82535 (December 30, 2010) (the PSD Narrowing Rule); ''Action to Ensure Authority to Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule; Final Rule,'' 75 FR 82254 (December 30, 2010) (the Title V Narrowing Rule).

[6] 42 U.S.C. 7475(a), 7479(1).

operational change that ''increases the amount'' of any air pollutant emitted by the source.[7]

The EPA's regulations implement these PSD applicability requirements through use of different terminology, and, in the case of GHGs, with additional limitations. Specifically, the regulations apply the PSD requirements to any major stationary source that begins actual construction[8] (if the source is new) or that undertakes a major modification (if the source is existing).[9] The term major stationary source is defined as a stationary source that emits, or has a PTE of, at least 100 TPY if the source is in one of 28 listed source categories, or, if the source is not, then at least 250 TPY, of regulated NSR pollutants.[10] We refer to these 100- or 250-TPY amounts as the major source limits or thresholds. A major modification is defined as ''any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase [ ] of a regulated NSR pollutant [ ]; and a significant net emissions increase of that pollutant from the major stationary source.''[11] EPA rules specify what amount of emissions increase is ''significant'' for listed regulated NSR pollutants (*e.g.,* 40 TPY for sulfur dioxide, 100 TPY for carbon monoxide), but for any regulated NSR pollutant that is not listed in the regulations, any increase is significant.[12]

A pollutant is a ''regulated NSR pollutant'' if it meets at least one of four requirements, which are, in general, any pollutant for which EPA has promulgated a NAAQS or a new source performance standard (NSPS), certain ozone depleting substances, and ''[a]ny pollutant that otherwise is subject to regulation under the Act.''[13] PSD applies on a regulated-NSR-pollutant-by-regulated-NSR-pollutant basis. The PSD requirements do not apply to regulated NSR pollutants for which the area is designated as nonattainment. Further, some modifications are exempt from PSD review (*e.g.,* routine maintenance, repair and replacement).[14]

Under the CAA, title V applies to a ''major source,'' which is defined to include any stationary source that is a ''major stationary source'' under section 302 of the Act.[15] CAA § 501(2). Under section 302, a ''major stationary source'' is defined as any stationary facility or source of air pollutants which directly emits, or has the potential to emit, 100 tpy or more of any air pollutant.[16] The title V regulations define a ''major source'' in 40 CFR 70.2.

In the Tailoring Rule, the EPA promulgated, for the first time, a regulatory definition of the term ''subject to regulation'' for purposes of the PSD regulations, and included that term, as defined, in the title V regulations. Under the Tailoring Rule regulations, a pollutant is ''subject to regulation'' if, in general, the pollutant is subject to actual control of the quantity of emissions (as opposed to, for example, being subject only to monitoring requirements). *E.g.,* 40 CFR 51.166(b)(48), 40 CFR 70.2. In addition, the Tailoring Rule also provides a special rule for GHGs, which provides that GHGs become pollutants ''subject to regulation,'' and therefore subject to PSD and title V, if they meet the following two-step phase-in thresholds. Step 1 applies the applicable requirements of PSD, including the BACT requirement to projects that increase net GHG emissions by the applicable threshold (75,000 tpy CO_2e) provided these projects would be subject to PSD anyway by significantly increasing emissions of at least one non-GHG pollutant. Under Step 1, for the title V program, only sources with current title V permits for non-GHG pollutants will have to address GHGs.

Step 2 then expands the program by phasing in additional large sources of GHG emissions that are not already subject to PSD or title V permitting requirements due to non-GHG emissions. In Step 2, PSD and title V requirements will apply to new sources that emit, or have the potential to emit, at least 100,000 tpy CO_2e. For existing sources, Step 2 applies title V requirements to existing sources that emit, or have the potential to emit, 100,000 tpy CO_2e and that are not already subject to title V requirements, and also applies PSD requirements to those sources that emit, or have the potential to emit, 100,000 tpy CO_2e and undertake a modification that increases net emissions by at least 75,000 tpy CO_2e. *See* 75 FR 31516.

In the Tailoring Rule, the EPA explained that ''we selected the 'subject to regulation' mechanism'' as the legal mechanism for establishing the phase-in thresholds because we had received information that states could more expeditiously adopt those thresholds through that mechanism. The EPA added that ''our action in this rulemaking [in establishing the phase-in thresholds] should be interpreted to rely on any of several legal mechanisms to accomplish this result * * * [including] revising the meaning of several terms in the [PSD] definition [provisions].'' 75 FR 31582. In this manner, EPA identified several legal bases within the definitional previsions of the PSD regulations to support the phase-in approach.

B. How does the Tailoring Rule address GHG emissions under PSD and Title V?[17]

In the Tailoring Rule, the EPA explained that the rulemaking was necessary because without it, the CAA PSD preconstruction review permitting program and the title V operating permit program would, under a literal reading of those provisions, apply to all stationary sources that emit or have the potential to emit more than 100 or 250 tpy of GHGs beginning on January 2, 2011. This was the date when the EPA's recently promulgated Light Duty Vehicle Rule (LDVR) took effect, imposing control requirements for the first time on carbon dioxide (CO_2) and other GHGs, thereby making them subject to regulation and triggering the PSD and title V permitting requirements. Therefore, a source owner proposing to construct any new major source that would emit or have the potential to emit at or higher than the 100/250 tpy applicability levels (and which therefore may be referred to as a ''major'' source) or modify any existing major source in a way that would increase GHG emissions, would need to obtain a permit under the PSD program that addresses these emissions before construction or modification could begin. Similarly, title V would apply to a new or existing GHG source exceeding the 100 tpy applicability threshold in the Act.

In the Tailoring Rule, we further explained that under these circumstances, and in the absence of streamlining methods, state and local permitting authorities would be burdened by the need to issue PSD permits to tens of thousands of small sources (including, for example, many commercial sources and small industrial sources) and to issue title V permits to millions of small sources (including, for example, many residential sources).

[7] 42 U.S.C. 7479(1), 7411(a)(4).

[8] 40 CFR 52.21(b)(11).

[9] 40 CFR 52.21(a)(2).

[10] 40 CFR 52.21(b)(1)(i).

[11] 40 CFR 52.21(b)(2)(i) and the term ''net emissions increase'' as defined at 40 CFR 52.21(b)(3).

[12] 40 CFR 52.21(b)(23)(i)–(ii).

[13] 40 CFR 52.21(b)(50).

[14] 40 CFR 52.21(b)(2)(iii).

[15] CAA § 501(2).

[16] CAA § 302(j).

[17] We include this discussion of the Tailoring Rule for background purposes only. We do not reopen for comment any of the determinations made in the Tailoring Rule or our rationale for them.

These extraordinary numbers of permit applications are orders of magnitude greater than the current inventory of annual applications and would vastly exceed the current administrative resources of the permitting authorities. Permit gridlock would result with the permitting authorities able to issue only a tiny fraction of the permits requested.

In the Tailoring Rule, we further explained that ''[t]hese impacts * * * are so severe that they bring the judicial doctrines of 'absurd results,' 'administrative necessity,' and 'one-step-at-a-time' into the *Chevron* two-step analytical framework for statutes administered by agencies.'' Tailoring Rule, 75 FR at 31517. We further explained that on the basis of this legal interpretation, we would phase-in the applicability of PSD and title V to GHG-emitting sources so that those requirements would apply ''at least to the largest sources initially, at least to as many more sources as possible and as promptly as possible over time * * * and at least to a certain point.'' *Id.* In the Tailoring Rule, we went on to promulgate the first two steps of the phase-in program, which we call Steps 1 and 2, and we made commitments for subsequent action.

In the Tailoring Rule, we closely reviewed the numbers of additional permitting actions for GHG-emitting sources, and the resulting administrative burdens, that would occur at various permitting thresholds. For example, we estimated the following permitting burdens associated with the Step 1 and Step 2 thresholds, compared to the administrative burdens of the then-current PSD and title V programs (that is, before applicability to GHG-emitting sources):

Step 1:

- Number of sources subject to PSD and title V permitting: The same as prior to Step 1
- Additional workload hours PSD program: 34,000 at a cost of $3 million
- Additional workload hours title V program: 27,468 at a cost of $1 million

Step 2:

- Number of additional sources subject to PSD permitting: 2 new sources, 915 modified sources
- Additional workload hours PSD program: 310,655 at a cost of $24 million
- Number of additional sources subject to title V permitting: 190 sources for each of the first 3 years
- Additional workload hours title V program: 141,322 at a cost of $7 million

75 FR 31541.

We further estimated that the combined additional PSD and title V permitting burdens after implementation of Steps 1 and 2 would, on an annual basis, mean a 42 percent increase in costs over the then-current PSD and title V program. 75 FR 31540, Table V–1.

C. In the Tailoring Rule, what commitments did the EPA make for Step 3?

In the Tailoring Rule, we noted that ''following implementation of the first phase of PSD and title V applicability to GHG sources, generally at the [proposed] threshold, additional action would be required over time to assure full compliance with the statute.'' 75 FR 31571. Accordingly, we included in the Tailoring Rule an enforceable commitment to issue a notice of proposed rulemaking in which we would propose or solicit comment on a third step of the phase-in, which we call Step 3. We committed to complete Step 3 by July 1, 2012, and to make Step 3 effective by July 1, 2013. We committed to solicit comment on lowering the thresholds, so that more sources would be subject to PSD and title V requirements, 40 CFR 52.22(b)(1), 40 CFR 70.12(b)(1), but we did not commit to either propose or finalize lower thresholds. We further stated that in light of the administrative burdens, we would not, in Step 3, lower the thresholds below the 50,000/50,000 tpy CO_2e levels.

In the Tailoring Rule, we recognized that lowering the thresholds in Step 3, and thereby bringing more sources into PSD and title V permitting, would mean that the permitting authorities would confront even greater administrative burdens. For example, we estimated that lowering the thresholds to the 50,000/50,000 level would increase administrative costs by 40 percent above administrative costs associated with Step 2.[18] Accordingly, we explained that whether we could lower the thresholds in Step 3 depended on (i) whether the EPA could develop streamlining measures, (ii) the time that permitting authorities need to ramp up their resources, and (iii) sources' abilities to meet the requirements of the PSD program and permitting authorities' ability to issue timely permits. 75 FR 31524. We elaborated:

(2) Criteria for Establishing Phase-in Schedule

The specific phase-in schedule under the tailoring approach will depend on several things. The first is our progress in developing streamlining methods that will render the permitting authority workload more manageable by taking some sources off the table (through regulations or guidance interpreting ''potential to emit''), and by allowing for more efficient permit processing (through general permits and presumptive BACT). At the same time, streamlining techniques will lower permitting costs to sources or even eliminate some sources' obligations to obtain permits altogether. The second is the time that permitting authorities need to ramp up their resources in an orderly and efficient manner to manage the additional workload. The third is information we have as to the sources' abilities to meet the requirements of the PSD program and the permitting authorities' ability to process permits in a timely fashion. That information will be based on the real-world experience the permitting authorities will accumulate as they proceed to process permit application for the larger GHG sources.

Thus, under our present approach, we will develop streamlining techniques, we expect the permitting authorities to ramp up resources in response to the additional demands placed upon them in the first two steps, and we will gather real world-information about the GHG permitting process; and based on all that, we will address expanding the PSD program in a step-by-step fashion to include more sources over time. We intend to follow this process to establish * * * the PSD applicability thresholds * * *.

75 FR 31559. With respect to the third criterion, we note that in the Tailoring Rule, we made clear that sources' abilities to meet the requirements of the PSD and title V programs depend at least in part on the ability of the states to develop, as part of the state programs, outreach and educational efforts to facilitate source compliance. Accordingly, for present purposes, we think this component concerning sources may be examined by a review of the states' progress in developing state GHG permitting programs. We also note that permitting authorities' abilities to issue timely GHG permits may be measured by the extent of any permitting backlog, and depend in large part on the permitting authorities' development of expertise. In this rulemaking, we seek information from the states as to their ability to issue timely permits, including data concerning their backlog, but we also are examining, more broadly, the states' progress in developing expertise in GHG permitting.

D. In the Tailoring Rule, what plan did the EPA announce for developing streamlining measures?

In the Tailoring Rule, we announced a plan to explore streamlining techniques that could make the permitting programs more efficient to administer for GHGs, and that therefore

[18] 75 FR 31540 (Table V–1).

could allow expanding those programs to smaller sources. Streamlining techniques to be evaluated include: (1) Defining PTE for various source categories, (2) establishing source category emission limits for presumptive BACT, (3) establishing general permits and permits-by-rule, (4) establishing a process for electronic permitting, and (5) establishing a process for lean techniques for more efficient permitting processes. We believe that these techniques have the potential to streamline the PSD and title V permitting programs for GHGs to ''allow the expeditious expansion of PSD and title V applicability to more GHG-emitting sources while protecting those sources and the permitting authorities from undue expenses.'' 75 FR 31526.

While we intend to move forward and develop streamlining approaches, we also stated in the Tailoring Rule that we did not expect to develop and implement any of these prior to Step 2. We also stated in the rule that several of these streamlining approaches will take several years to develop, requiring separate rulemaking both at the federal level, and then through state and local processes. We, nonetheless, committed to explore a number of possible streamlining actions prior to the Step 3 rulemaking.

In addition, with respect to title V, in the Tailoring Rule we noted that commenters on the proposal for that rule stated that the EPA should apply the title V program only to sources that are subject to applicable requirements, so that sources should not be required to hold ''empty permits'' (*e.g.,* permits issued to a source that is not subject to any applicable requirement for any pollutant). In the Tailoring Rule, we recognized that not requiring sources to hold such ''empty permits'' is a potential means for relieving title V permitting burdens. [75 FR 31566.] We also stated that—

> We need to gather more information concerning the potential number and utility of ''empty permits'' for GHG sources, in light of the fact that the need for requirements in title V permits will vary based on the requirements of each SIP, and the fact that some SIPs contain broadly applicable requirements.

75 FR 31566. We added that in the Step 3 rulemaking, ''we may consider whether to limit title V applicability to GHG sources in order to minimize the number of GHG sources with 'empty' permits.'' Tailoring Rule, 75 FR 31567.

E. In the Tailoring Rule, what commitments did the EPA make for subsequent action?

In addition, in the Tailoring Rule, we established an enforceable commitment that we will (i) complete a study by April 30, 2015, to evaluate the status of PSD and title V permitting for GHG-emitting sources, including progress in developing streamlining techniques; and (ii) complete further rulemaking (which we refer to as Step 4), based on that study by April 30, 2016, to address the permitting of smaller sources. That rulemaking may also consider additional permanent exclusions based on the ''absurd results'' doctrine, where applicable.

In the Tailoring Rule, we also included a provision assuring that no source with emissions or potential to emit below 50,000 tpy CO_2e, and no modification resulting in an increase and a net GHG increases of less than 50,000 tpy CO_2e, would be subject to PSD or title V permitting before April 30, 2016. We included this provision on the basis of our conclusion that the administrative burdens that would accompany permitting sources below the 50,000 tpy threshold would be so great that it would be impossible to administer the permit programs for these sources until at least 2016, even with the streamlining actions that the EPA may be able to develop, and the increases in permitting resources that we reasonably expect the permitting authorities to acquire.

IV. Available Information on GHG Permitting

To support this Step 3 rulemaking, the EPA has gathered additional information on the impact that GHG permitting is having on permitting authorities at the current threshold levels and the potential impact that would result from a reduction in the GHG permitting thresholds to levels as low as 50,000 tpy CO_2e. Section IV.A discusses the actual permitting that has occurred since January 1, 2011. Section IV.B discusses information gathered through preliminary consultations with eight state PSD permitting authorities, as well as, experience garnered from the EPA regional offices that are the PSD permitting authorities for certain states.[19] Section IV.C presents information from an analysis of the number of existing and new sources that would be potentially major sources of GHGs at a range of thresholds between the current level of 100,000 tpy CO_2e and 50,000 tpy CO_2e.

A. GHG Permitting Activity to Date

As of December 1, 2011, the EPA and state permitting authorities had issued 18 PSD permits with GHG requirements. We also estimate that as of that date, the EPA and state permitting authorities had received an additional 50 GHG PSD permit applications. The types of source categories for which permitting authorities have issued GHG permits include: biofuel production, cement plants, electric generating units, lime production facilities, outer continental shelf exploration, pulp and paper mills, and refineries. Eleven states and three EPA regions issued these permits. In most cases, no permitting authority issued a permit for the same source category more than once. We discuss in section V the extent to which these permitting actions have provided information relevant to Step 3.

B. Consultations With States

To obtain additional information on the current status of GHG permitting based on the implementation of Step 1 and Step 2 and the potential impact of reducing the GHG thresholds in Step 3, we consulted with eight state permitting authorities—Iowa, Louisiana, Michigan, New Jersey, North Carolina, Pennsylvania, South Dakota and Utah—all of which have experience with GHG permitting, and which represent a cross-section of state programs geographically and in terms of population and types of sources. In addition, we reviewed the experience of the EPA regional offices that act as PSD permitting authorities in state jurisdictions: Region 4, which issues PSD permits for GHG emissions in Florida and for all regulated pollutant emissions from outer continental shelf sources in the eastern portion of the Gulf of Mexico; Region 6, which issues PSD permits for GHG emissions in Arkansas and Texas; and Region 9, which issues PSD permits for all regulated pollutants in many of the local air quality management districts in California. For additional information concerning responses to the survey, please refer to the Docket ID No. EPA–HQ–OAR–2009–0517.

These states and regional offices confirm that they have not yet experienced the increase in the number of major source permitting actions that was predicted to result from the implementation of Step 1 and Step 2. They generally do not believe that 2011 has been representative of the permitting burdens that they expect will

[19] In the title V program, the responsible permitting agency is referred to as the ''permitting authority,'' while in the PSD program, this entity is referred to as the ''reviewing authority.'' We use the two terms interchangeably in this preamble.

ultimately occur under the current Tailoring Rule.

In addition, the states confirmed that to this point, they have not been able to build up their GHG permitting infrastructure. For example the permitting activity to date has provided limited, if any, opportunity to build internal capacity to handle GHG permitting for a diverse set of sources or more efficiency for any particular source category. Similarly, the lack of permitting experience greatly diminished the opportunity to develop meaningful streamlining approaches to address GHG permitting. As a result, states indicated that they have made little or no progress in implementing streamlining measures, and have not adopted any such measures specifically to address GHGs.

C. Additional Technical Support for the Step 3 Rule

To support the decision-making process for this Step 3 rule, the EPA carried out an analysis to estimate the number of facilities that would exceed different GHG emissions threshold levels.[20] This analysis built upon analysis the EPA included in the Tailoring Rule to support the threshold decisions in that action.[21] In the Tailoring Rule analysis, the EPA evaluated eight different PTE thresholds between 100 and 100,000 tpy CO_2e, including 50,000 tons per year. For this Step 3 analysis, the EPA evaluated nine additional thresholds between 50,000 and 100,000 tpy CO_2e in 5,000 tpy increments (that is, 55,000 through 95,000 tpy CO_2e). The EPA considered stationary sources in the following sectors:

- Electricity Generation (facilities with fossil fuel-fired electric generating units);
- Industrial sources (14 subcategories of industries with process and combustion GHG emissions);
- Energy (oil and gas extraction, transport, and processing; underground coal mining);
- Waste Treatment (landfills and municipal solid waste incinerators);
- Agriculture (stationary fuel combustion);
- Commercial (stationary fuel combustion); and
- Residential (stationary fuel combustion).

For each sector, the analysis estimated the number of sources that would become major sources for GHGs at each of the different threshold levels and the number of new major sources projected to be added each year. The study found that at a Step 3 major source threshold of 50,000 tpy CO_2e, approximately 4,650 additional sources would become major sources of GHGs (increasing from 5,326 at 100,000 tpy CO_2e, to 9,980 at 50,000 tpy). About half of these would be in the ''unspecified industrial stationary combustion'' subcategory of industrial facilities; 16 percent in the waste treatment sector, landfill subcategory; 14 percent in the energy sector, oil and gas subcategory; 12 percent in the commercial/stationary fuel combustion sector; 4 percent in the electricity generation sector and the remaining 4 percent scattered among the remaining sectors and industrial subcategories. At a threshold of 80,000 tpy CO_2e the number of commercial sources that become major sources of GHGs significantly increases (compared to 100,000 tpy CO_2e) and at a threshold of 55,000 tpy CO_2e, some multi-family residential sources become major sources. The analysis found that no sources in the agricultural or single family residential categories would become major sources of GHGs at a threshold of 50,000 tpy CO_2e. Note that this analysis did not differentiate between sources that become major only because of the source's GHGs emissions from sources that are already major for one or more other pollutants.

The EPA's analysis identified sources that would become subject to permitting requirements because of GHG emissions alone.[22] Based on this analysis, we estimate that a reduction from the current Step 2 threshold to 50,000 tpy CO_2e would result in nearly 3,000 sources becoming major sources due to their GHG emissions alone (increasing from 552 sources at 100,000 tpy CO_2e, to 3,539 at 50,000 tpy). In addition, we estimate that 1,014 additional modifications would be subject to PSD permitting based on GHG emissions at 50,000/50,000 tpy CO_2e versus the Step 2 thresholds of 100,000/75,000 (increasing from 917 per year to 1,931).

In addition to determining the amount of potential additional permit actions associated with the various thresholds, the EPA also determined the administrative burdens associated with those actions. To do so, the EPA relied on the same per-permit administrative cost figures used in the Tailoring Rule for both PSD and title V permitting, for both commercial/residential sources and industrial sources, as well as for both new construction and modifications.[23] The EPA also determined the amount of GHG stationary source emissions associated with the sources potentially affected by the various thresholds.

To determine the impacts of lowering the thresholds in Step 3, the EPA compared the amounts of administrative costs and GHG inventory covered at the various cut-points to the amounts at the 100,000/75,000 Step 2 levels.[24] For example, with respect to the PSD administrative costs, as we stated in the Tailoring Rule, 75 FR 31540 (Table V–1), at the 100,000/75,000 Step 2 levels, we expect annual PSD permitting actions for GHG-emitting sources to include 242 newly constructed sources and 1,365 modifications (917 for GHG emissions alone plus 448 for anyway sources) and we expect that these PSD GHG permitting actions would increase permitting authority administrative burdens by 42 percent above existing total air permitting burdens (including permitting for conventional (*i.e.,* non-GHG pollutants under Tailoring Rule Step 1), because these actions would trigger permitting requirements for both PSD and title V. In total, we estimate the facilities meeting the Step 2 major source applicability thresholds account for approximately 67 percent of the total national stationary source GHG emissions. At the 50,000/50,000 levels, the EPA estimates annual PSD permitting actions involving GHG-emitting sources to include 243 newly constructed sources and 2,379 modifications (1 more newly constructed source and 1,014 more modifications than at the 100,000/75,000 level). While the EPA estimates these GHG permitting actions to increase permitting authority administrative burdens by 40 percent above the total burdens at Step 2 levels (and 99% above the administrative burdens without GHG permitting), we estimate the facilities meeting these major source applicability thresholds to account for approximately 70 percent of

[20] *See* Technical Support Document ''Summary of Methodology and Data Used to Evaluate Resource Requirements at Alternative Greenhouse Gas (GHG) Permitting Thresholds'' (December 2011).

[21] *See* ''Technical Support Document for Greenhouse Gas Emissions Thresholds Evaluation,'' March 29, 2010, Docket No. EPA–HQ–OAR–2009–0517–19158.

[22] *See* ''Summary of Methodology and Data Used to Evaluate Resource Requirements at Alternative Greenhouse Gas (GHG) Permitting Thresholds,'' December 2011.

[23] We note that none of the challenges to the Tailoring Rule have addressed these burden estimates; we have not revisited them for purposes of this rule, nor are we are re-opening them for comment.

[24] This level refers to new sources as well as existing sources that are not ''anyway'' sources and that emit, or have the potential to emit, at least 100,000 tpy CO_2e, as well as existing 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.

total national stationary source GHG emissions, just three percent more than currently covered under Step 2. For a more complete description of the EPA's analysis and an explanation, *see* the Technical Support Document titled, ''Summary of Methodology and Data Used to Evaluate Resource Requirements at Alternative Greenhouse Gas (GHG) Permitting Thresholds'' (December 2011).

V. Proposed Step 3 Rule

A. Overview

The Tailoring Rule's phase-in approach is based on data concerning the numbers of GHG permitting actions the permitting authorities would have to undertake and the costs of those actions—both absolute and in comparison to their current budgets—at various different thresholds for the applicability of PSD and title V to GHG-emitting sources. In the Tailoring Rule, we began the phase-in by establishing Steps 1 and 2, which applied PSD and title V to ''anyway'' sources [25] and sources emitting GHGs at the 100,000/75,000 tpy CO_2e level. To do so, we determined that permitting authorities could handle the hundreds of additional permitting actions that would occur under Steps 1 and 2, even though the authorities' administrative costs would increase by 42 percent over their then-current administrative costs for both PSD and title V programs.

The present rulemaking represents the fulfillment of our commitment in the Tailoring Rule to undertake Step 3 of the GHG PSD and title V phase-in process. At this time, because of the limited amount of new construction and modifications that sources have undertaken in the past year, we believe state permitting authorities have not had sufficient time and opportunity to develop the necessary infrastructure and increase their GHG permitting expertise and capacity, which makes it administratively infeasible to apply PSD and title V permitting requirements to additional sources. Accordingly, we are proposing to leave the applicability thresholds for GHGs unchanged.

In the Tailoring Rule, we committed to undertake future rulemaking, including this Step 3 rulemaking, to examine whether we could lower the thresholds to, potentially, as low as 50,000/50,000, and thereby apply PSD and title V to more sources. We recognized that lowering the thresholds would add more administrative costs on top of those added by Steps 1 and 2, and as a result, we stated that whether and when we would lower the thresholds would depend on the pace at which the EPA and permitting authorities could develop streamlining measures to expedite permit program administration and permitting authorities could hire and train staff, as well as gain experience with GHG permitting. Specifically, we indicated that further phase-in of GHG applicability would depend on three criteria: (i) Whether the EPA could develop streamlining measures, (ii) the time that permitting authorities need to ramp up their resources, and (iii) sources' abilities to meet the requirements of the PSD program and permitting authorities' abilities to issue timely permits.

As described in the following, the states and the EPA have made some progress in these areas. For example, the states have issued some GHG permits and we are proposing streamlining measures in this rulemaking. However, neither the states nor the EPA have had the opportunity to make significant progress in these areas. First, the states have had only limited experience in GHG permitting and therefore have not had the opportunity to develop significant expertise. The main reasons for this are the unexpectedly low number of PSD permit applications submitted to date and the short amount of time since GHG permitting began. As the volume of PSD permit applications increases, EPA expects that more permitting authorities will further develop the necessary specialized expertise required for case-by-case review of GHG permit applications, including the establishment of a robust GHG BACT record. Second, the states have not been able to develop their GHG permitting infrastructure—*e.g.,* hiring additional personnel, establishing policies and conducting outreach programs to sources unfamiliar with the permitting process—largely because their permitting resources have not increased and, in fact, in some cases have decreased and may decrease further in the near future. Similarly, for title V, applications for title V permits are not generally due until a year after title V becomes applicable to a source. Thus, for Step 2 title V sources, permit applications are generally not due until July 1, 2012, and states have not gained title V permitting experience. Third, we have not had the opportunity to develop significant streamlining approaches, largely because, as we stated in the Tailoring Rule, certain streamlining approaches require a longer process. Because of these reasons and following the criteria, described in the Tailoring Rule, we are establishing Step 3 at the current levels.

The following discusses these criteria, beginning with the ability of states to ramp up and build infrastructure, and notes the states' and our experience with GHG permitting to date under the current Step 1 and Step 2 applicability thresholds. We also address the additional two criteria noted above and the environmental benefits potentially associated with any further reduction in the GHG PSD permitting thresholds.

B. Have states had adequate time to ramp up their resources?

A criterion that we described in the Tailoring Rule for whether to lower the thresholds in Step 3 was whether the permitting authorities could increase their resources. As discussed previously in the background section, we stated in the Tailoring Rule that we expected Steps 1 and 2 to result in an increase in PSD permits for new construction and modifications and in title V permits. We estimated that Steps 1 and 2 would result in a 42 percent increase in administrative burdens for permitting authorities. We expected that some increase in state permitting resources would be needed to accommodate, at least in part, those new demands.

As noted, to this point states have not been confronted with the amount of GHG permit applications that we had expected in the Tailoring Rule for Steps 1 and 2. EPA estimates that the unexpected small number of permit applications to this point reflect the economic downturn, which has depressed new construction and modifications. The number of permit applications in a given year is based on individual business decisions which we believe are directly linked to the economic situation. The Agency expects that this situation will be short-lived, and that the pace of permitting will pick up as economic conditions improve and as GHG permitting becomes better established. Thus, it is prudent for states to continue to plan on confronting additional administrative demands expected as part of Steps 1 and 2. As discussed in the following, they have confronted other administrative burdens as well and if the thresholds are lowered in Step 3, they will confront still more administrative burdens. Importantly, based on our consultations with a limited number of states, we do not believe that states have had the opportunity to obtain the necessary

[25] We refer to these sources as ''anyway'' sources because they will become subject to PSD for their GHG emissions if they undergo PSD permitting anyway, either for new construction or for modification projects, based on emissions of non-GHG pollutants; and, by the same token, the will become subject to title V for their GHG emissions if they are subject to title V anyway due to their non-GHG emissions.

resources and to develop their infrastructure to accommodate the level of permitting expected in Steps 1 and 2.

In addition, an August 2011 report by the Environmental Council of the States (ECOS) [26] emphasizes the continued need for additional resources before full implementation of the program can begin. It also notes that permitting authorities expect workloads to double or triple as a result of applications for synthetic minor limits to sources who wish to avoid GHG permitting.

Further, as quantified in the Tailoring Rule, lowering the thresholds would increase those burdens. We have estimated that lowering the thresholds to 60,000/60,000 would increase administrative burdens by 20 percent above the total burdens at Step 2 levels (and 40 percent above the pre-GHG permitting burdens). As noted above, lowering them to 50,000/50,000 would increase administrative burdens by 40 percent above the total burdens at Step 2 levels (and 99 percent above the pre-GHG permitting burdens). As we discussed in the Tailoring Rule, lowering applicability thresholds would trigger requirements for more sources that never before have been regulated under the PSD and title V permitting programs. As a result, permitting agencies will need to conduct an education and outreach program to raise awareness and understanding of the regulatory requirements for these smaller sources. Absent this outreach effort, we believe that many sources will not understand, and perhaps may not even be aware of, their new regulatory obligations.

Finally, we note that certain procedural aspects of the GHG permitting process have proved to be more resource- and time-intensive for states than anticipated at the time of the Tailoring Rule. In the final Tailoring Rule, we finalized the applicability thresholds within the definition of ''subject to regulation,'' instead of within the ''major stationary source'' definition. We made this change in regulatory approach because we received information indicating that many states could adopt the applicable thresholds through a regulatory interpretation of the term ''subject to regulation,'' instead of a SIP revision.[27] Since finalizing the Tailoring Rule, we discovered that in fact, very few states were able to adopt the applicable thresholds by interpretation alone, and instead needed SIP revisions to be able to regulate GHGs under their approved PSD programs at the levels of the final Tailoring Rule. Moreover, some states were obliged to invoke emergency procedures to expedite revision of their state laws. This unexpected, additional state process required for adopting the Tailoring Rule thresholds may have delayed some states in developing their permitting program infrastructure.

By the same token, for title V programs, we believed that many states could adopt the Tailoring Rule thresholds through a regulatory interpretation of the term ''subject to regulation,'' and that this approach would allow permitting authorities to implement title V for GHGs quickly with little rulemaking burden. However, as it has happened, most states need to change the state laws and/or regulations governing their title V programs to be able to permit GHGs at the Tailoring Rule threshold levels. In fact, it turned out that only 5 state programs and numerous local districts in California, did not need to enact program revisions.

In the Tailoring Rule, we expected that over time, permitting authorities would have the opportunity to increase their resources to allow them to process more GHG permit applications in a timely fashion. To this point, we see little evidence that permitting authorities could increase resources and, in fact, permitting authorities generally are facing fewer resources. Reductions in state environmental agency budgets are fully consistent with the overall reductions in state budgets recently seen in the United States.

The August 2010 ECOS report, noted previously,[28] concluded that state budgets decreased by an average of approximately $21 million per state from 2009 to 2011. On June 28, 2011, the National Association of Clean Air Agencies (NACAA) sent a letter to the U.S. House of Representatives detailing the status of 40 state and local air quality agencies.[29] The NACAA letter indicates that 80 percent of air agencies experienced a decline in staffing levels in the last 4 years. Over the years 2008–2010, the average loss of staff per agency was 16.7 percent. In addition to staffing losses, 48 percent of air agencies experienced furloughs, and the majority faced significant declines in budgets. These cutbacks resulted in curtailing core air program activities including permit issuance, and education and outreach programs. In our recent consultations with states most confirmed that they have seen their budgets and staffs reduced in recent years as the states have responded to the economic downturn and budget shortfalls. For the previously described reasons, states have not had the opportunity to build capacity and resources to handle GHG permitting. Accordingly, this criterion of state resources supports maintaining the current thresholds.

C. What is the ability of permitting authorities to issue timely permits?

The second criterion we address is whether permitting authorities have the ability to issue timely permits based on efficiencies resulting from GHG permitting implementation experience.[30] In describing this criterion in the Tailoring Rule, we expected that permitting authorities, by acting on the anticipated volume of GHG PSD permit actions, would have the opportunity to establish efficient methods for resolving issues and processing permits, including developing expertise within their staff. This would allow them to achieve efficiencies that, in turn, would create capacity for processing more GHG permit applications. Thus, with this criterion, we based our commitment to complete the Step 3 rulemaking in part on the assumption that Steps 1 and 2 would provide us with the necessary information to determine whether and when it has become possible for states to administer GHG permitting programs for additional sources. This has not yet happened.

While we recognize that we have not yet completed a full year of implementation for Steps 1 and 2, GHG permit applications are fewer than we had expected. As of December 1, 2011, the EPA and state permitting authorities have issued only 18 GHG PSD permits. As noted, these 18 permit actions have been spread among 11 states and the EPA. Almost all of the states have issued only one GHG permit, and only Michigan has issued as many as three

[26] S. Brown, A. Fishman, ''The Status of State Environmental Agency Budgets, 2009–2011,'' Steven Brown, Executive Director, and Adam Fishman, Intern.

[27] As discussed in the preamble to the final Tailoring Rule (75 FR 31581), we participated in teleconferences with 1 local and 6 state agency permitting authorities on this topic, and they generally agreed that this approach would better facilitate state incorporation of the limitations in the final rule. We therefore concluded that it was likely that the state rules were sufficiently open-ended to apply EPA's approach by interpretation (although some states might elect to pursue rulemaking in addition to or instead of interpretation).

[28] ''The Status of State Environmental Agency Budgets, 2009–2011,'' p. 3.

[29] S. William Becker to Honorable Michael Simpson, Chairman Subcommittee on Interior, Environment, and Related Agencies, and Honorable James Moran Ranking Member, Subcommittee on Interior, Environment, and Related Agencies.

[30] As noted above, this criterion may be measured by the period of time permitting authorities need to issue permits, and it also encompasses the sources' ability to meet GHG permitting requirements.

permits. This activity has simply been too limited to allow States to build internal capacity to handle GHG permitting for a diverse set of sources, to develop more efficient techniques for permitting any particular source category, or to develop streamlining approaches to address GHG permitting. In our consultations with the states, some have confirmed that they have not been able to build up their GHG permitting infrastructure. However, they generally have added that they do not believe that 2011 has been representative of the permitting burdens that they expect will ultimately occur under the current Tailoring Rule. In sum, the states' experiences to date do not provide a basis for us to conclude that permitting authorities in fact have the ability to issue timely permits based on GHG permitting experience thus far.

D. Has the EPA developed streamlining methods?

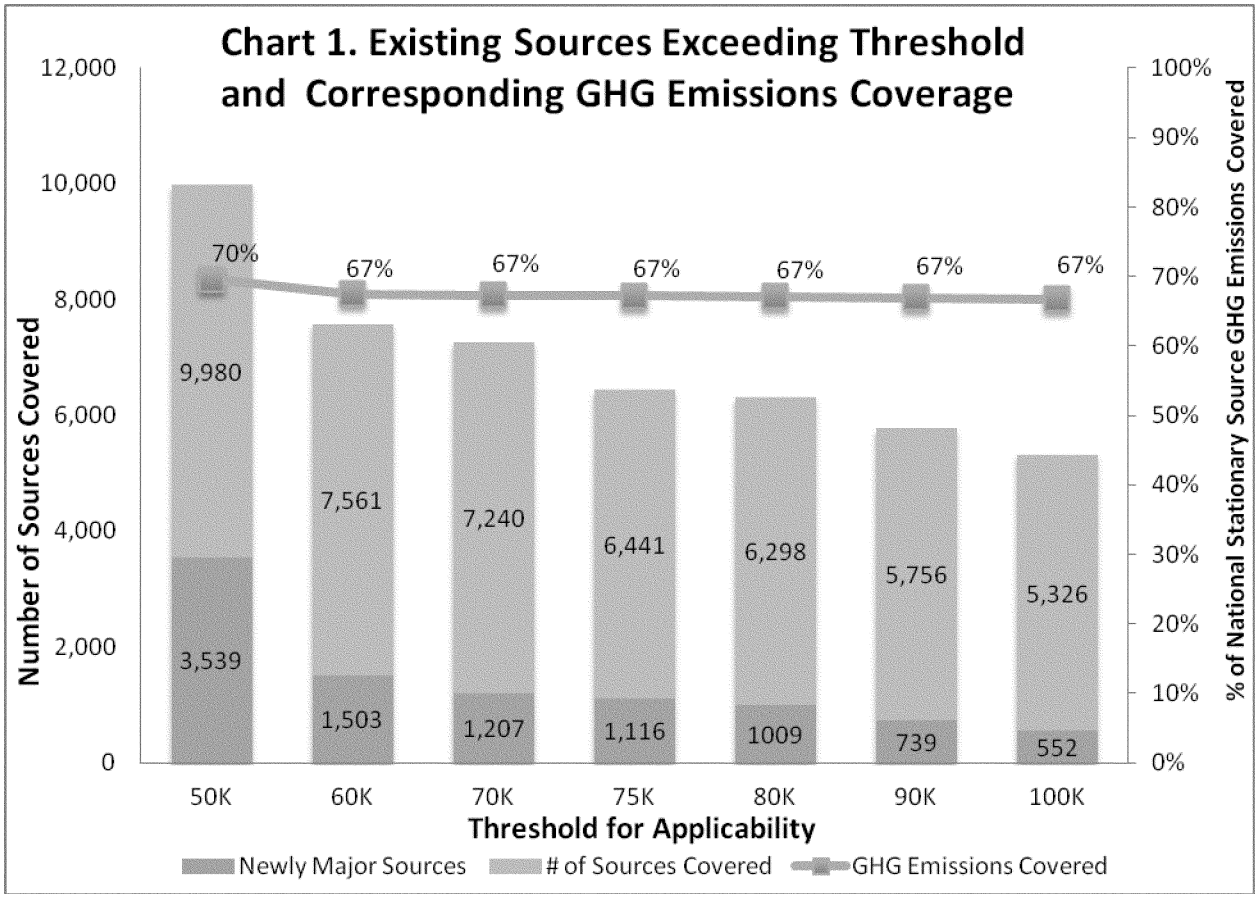
In the final Tailoring Rule, we indicated that implementation of permit streamlining approaches would assist permitting authorities by removing some sources from the permit program, or allowing more efficient processing of applications. As we indicated in the final Tailoring Rule, however, we expected it would take several years for the EPA to develop and for States to gain authority to implement effective streamlining methods. We did not anticipate that streamlining approaches would be available by the time of the Step 3 rulemaking. We also note that in the previously described consultations, the states reported that they have made little progress in implementing streamlining measures, and none have adopted measures specifically to address GHGs. This information is consistent with EPA's estimate, in general, that it would take at least 3 years for EPA to develop, and for states to adopt and implement streamlining methods, so that sufficient progress on streamlining would likely not occur before the Step 3 rulemaking deadline.

We are proposing requirements for PALs and synthetic minor limitations for sources, and these also constitute streamlining methods that can be expected to free up administrative resources. However, these methods will not be available in time to enhance the state's ability to manage the GHG permitting programs during Step 3. The benefits of a PAL will not be seen until the States adopt these requirements into their SIPs and sources apply for and receive permits that reflect PALs. For the previously-described reasons, although we are making progress in developing streamlining measures, the current status of streamlining measures supports maintaining the thresholds for Step 3.

In addition, as noted, we are continuing to consider other streamlining approaches, including limits on potential-to-emit, general permits, and presumptive BACT. For the most part, these other streamlining methods even if further developed, would have limited benefit for improving permitting administration for the source categories currently subject to GHG PSD permitting or that are under consideration for Step 3. We discuss our progress in developing these other streamlining methods, and their limited utility for Step 3, in section VI. This rulemaking provides a good opportunity to provide the EPA with input on additional streamlining ideas for implementation of the GHG permitting programs. More specifically, in section VII.B we request comment on other potential streamlining techniques that may hold promise to reduce PSD and/or title V permitting burden for sources of GHGs and permitting authorities.

E. Limited Benefit From Lowering Thresholds in Step 3

The fact that PSD would apply to the great bulk of GHG emissions at the Tailoring Rule thresholds was a factor in our decision to establish the thresholds at the 100,000/75,000 levels. For the current rulemaking, we have conducted further analysis, which shows that reducing the thresholds in Step 3 to as low as 60,000/60,000 would bring within the potential ambit of the PSD program less than an additional 1 percent of all GHG emissions from all stationary sources above the statutory thresholds while potentially adding a significant number of sources into the permitting programs. This is because of the large amount of GHG emissions that come from very large sources, coupled with the relatively small number of additional sources that emit between the 100,000/75,000 and the 60,000/60,000 levels. Lowering the thresholds to 50,000/50,000 would bring within the ambit an additional 3 percent, above the 100,000/75,000 levels, of all GHG emissions from all stationary sources above the statutory thresholds. Please refer to the following Chart. Of course, in any year, only a fraction of those emissions would actually become subject to PSD controls, which would be the fraction emitted by sources that undertake modifications or new construction. Thus, the additional reductions in GHG emissions from lowering the thresholds in Step 3 would be small under any circumstances even if the thresholds were lowered to 50,000/50,000. This small amount of environmental benefit is an additional factor that, along with the additional burden associated with permitting these sources supports not lowering the thresholds in Step 3.



F. Conclusion

In the Tailoring Rule, we recognized that the Step 1 and 2 thresholds we promulgated would create significant administrative burdens on permitting authorities. We stated that we would lower the thresholds, and thereby create additional administrative burdens, only after: (i) We had the opportunity to develop efficiencies in GHG permitting through streamlining measures; (ii) the states had the opportunity to build up their GHG permitting infrastructure and to develop GHG permitting expertise; and (iii) sources have the ability to meet the requirements of the PSD program and permitting authorities have the ability to issue timely permits. These things have not happened, as the preceding discussion has made clear. As a result, consistent with the commitment we made in the Tailoring Rule, lowering the thresholds is not feasible at this time.

Importantly, because, as noted above, permit activity is linked to macro-economic conditions, we consider the relative lull in permit activity due largely to the recent economic downturn to be temporary, and we expect that the pace of permit applications will increase. In fact, because of the link to macro-economic conditions, it is difficult to predict whether the increase in permit activity under Step 2 will occur incrementally or rapidly. If it occurs rapidly, it would be particularly burdensome for states. As a result, even a modest increase in permitting burden that could result from lowering thresholds in Step 3 could overwhelm state permitting capacity and result in substantial delays in processing permit applications.

All told, these considerations support maintaining the Tailoring Rule thresholds through Step 3. Additional time is required to develop streamlining measures to expedite permit program administration, and permitting authorities need additional time to secure resources, hire and train staff, and gain experience with GHG permitting before we move toward full implementation of the program. Accordingly and consistent with our Tailoring Rule commitment, we propose to maintain the thresholds of 100,000/75,000 tpy CO_2e.

We note that maintaining PSD and title V applicability for GHG sources at the current thresholds for Step 3 does not have implications for whether we will lower the thresholds in Step 4, which we describe above, or afterwards. Our actions in Step 4 will depend on our evaluation of the criteria and other factors described above. If those criteria and other factors point in the direction of lowering the thresholds, we will do so, and we will lower them to whatever level indicated. A decision not to lower the thresholds in Step 3 does not foreclose a decision to lower them in Step 4.

VI. Streamlining for PSD and Title V Permitting of GHGs

In the Tailoring Rule, the EPA committed to explore streamlining measures as an integral part of the phase-in approach to permitting requirements for GHG emissions under PSD and title V. Streamlining techniques would allow permitting authorities to be more efficient in administering their GHG permit programs by reducing the overall resources required to administer the PSD permitting program now and in the future. By implementing effective streamlining techniques permitting authorities could move more rapidly toward regulating a larger set of GHG sources. In the Tailoring Rule, we identified potential streamlining options. We also acknowledged that it will take us several years to develop, and for states to gain authority to

implement effective streamlining methods. We committed to continue to explore the identified options, and to request comment on these and any additional streamlining approaches in the Step 3 rulemaking.

Today, we propose to adopt two regulations: One that streamlines the PSD permit program, and one that potentially streamlines both the PSD and the title V permit program. As explained more fully below, the first regulation expands the existing PAL provisions to allow reviewing authorities to establish GHG PALs on either a mass-basis (tpy) or a CO_2e-basis, including for existing sources that are not yet GHG major sources, and allows PALs to be used as an alternative approach for determining both whether a project is a major modification and whether GHG emissions are subject to regulation. As discussed below, the second regulation establishes a mechanism that allows individual sources to obtain synthetic minor limitations (potential to emit (PTE) limitations) for GHG emissions in areas subject to a GHG PSD FIP, which would allow certain sources or projects that might otherwise be required to obtain a GHG PSD permit to obtain a permit with an emissions limitation that would restrict the source's GHG emissions below the GHG PSD permitting threshold.

We previously had not identified PALs as a viable streamlining technique. Since we finalized the Tailoring Rule, we recognized that the existing PAL regulation has limited value for GHG sources, and that revising the current PAL regulations to address the unique applicability aspects associated with GHGs could streamline PSD permitting for more sources and make PALs for GHGs more useful for all source categories. Specifically, by amending the regulations, we hope to encourage greater use of GHG PALs, which in turn would encourage sources to reduce existing GHG emissions through efficiency improvements and other measures to maximize the operational flexibility provided by the PAL.

In contrast, our proposed Tailoring Rule discussed the synthetic minor—PTE mechanism we now propose, but expressed concerns that this approach might overwhelm permitting authorities based on the sheer number of sources that could apply for individual synthetic minor permits. Since finalizing the Tailoring Rule, we have continued to evaluate this. We have concluded that offering a mechanism to establish PTE limits for individual sources provides environmental benefit, and helps streamline the PSD and title V permit programs, at least in the short term.

Accordingly, today we propose to amend the federal PSD regulations to create authority for (i) reviewing and permitting authorities to issue PALs to major and potentially-major GHG stationary sources on either a mass-basis or a CO_2e basis and also to allow such PALs to be used as an alternative approach for determining whether a project is a major modification and subject to regulation for GHGs by amending regulations in 40 CFR 51.166 and 52.21, and (ii) federal reviewing authorities to issue GHG synthetic minor permits by amending regulations in 40 CFR 52.21. We also discuss our progress in evaluating the suitability of other streamlining options that we identified in the final Tailoring Rule including:

(1) Defining PTE for various source categories,

(2) Establishing emission limits for various source categories that constitute presumptive BACT,

(3) Establishing procedures for use of general permits.

Although we propose two streamlining regulations on a more rapid schedule than we originally envisioned, we do not project that these approaches will provide a sufficient reduction in the immediate permit workload to justify a decrease from the Step 1 and Step 2 applicability levels. The PAL rule, in fact, may increase the immediate short term workload by requiring development of PAL provisions and potential SIP revisions, as well as gaining experience in issuing PALs, but will reduce the long term workload on reviewing authorities and sources. The GHG synthetic minor permit program will reduce the short term workload by providing a less burdensome permitting process, and it may allow some sources to avoid PSD and title V permitting at the current Step 1 and Step 2 applicability levels. We believe that these streamlining regulations will offer advantages to industry, permitting authorities and the environment. They will provide operational flexibility to sources and will also provide incentives for sources to install good emission control systems to maximize operational flexibility. These streamlining regulations also help build GHG permitting capacity, because both regulations still require the reviewing authority to gain an understanding of GHG emissions for the individual source in context of establishing appropriate emission limitations and monitoring, recordkeeping and reporting requirements. Accordingly, we believe implementation of both regulations should decrease overall administrative burdens and thus could enable us to reduce the GHG applicability thresholds at some time in the future.

The following discussion outlines our two streamlining proposals, and then discusses the viability of other streamlining options.

A. Plantwide Applicability Limitations for GHGs

1. What is the EPA proposing?

Our proposal intends to provide permitting authorities with the authority to issue GHG PALs to sources at which GHG emissions could become subject to regulation, and which then must undertake a major modification NSR applicability determination. We provide a summary of several approaches for amending the regulatory language to implement a GHG PALs program, and request comment on possible changes to the regulations, any of which we may finalize.

We propose three changes to the existing PSD regulations in 40 CFR 51.166 and 52.21. These changes allow reviewing authorities to issue PALs to both existing major and potentially major GHG stationary sources on either a mass-basis or a CO_2e basis and to allow GHG PALs to be used as an alternative approach for determining whether a project is a major modification and subject to regulation for GHGs. The proposed changes would continue to protect the environment from adverse impacts from projects that would increase emissions. The changes would also streamline GHG preconstruction permitting as part of our overall efforts to tailor the PSD applicability provisions to include regulation of GHG emissions.

Specifically, we propose to amend the regulations to allow reviewing authorities to (1) issue PALs to GHG-only sources [31]; (2) issue either a mass-based (tpy) or a CO_2e-based PAL to a particular source; and (3) allow compliance with a GHG PAL to be used as an alternative applicability approach for determining whether a project is a major modification and subject to regulation [32] for GHGs. We believe these changes are appropriate to enable the use of PALs for GHG, given the unique

[31] A GHG-only source is a source that emits or has the potential to emit 100/250 tpy GHG on a mass-basis, and emits or has the potential to emit 100,000 tons per year of CO_2e or more, but does not emit or have the potential to emit any other regulated NSR pollutant at or above the applicable major source threshold.

[32] For an explanation of ''subject to regulation,'' *see* the background section in the Tailoring Rule at 75 FR 31516.

characteristics of GHGs and the subject to regulation applicability approach adopted for GHGs in the Tailoring Rule. We request comment on each aspect of this proposal.

2. What is a PAL?

Under the EPA's regulations, a PAL is an emissions limitation expressed in tons per year for a pollutant that is enforceable as a practical matter and is established source-wide in accordance with specific criteria.[33] PALs are voluntary in the sense that sources may, but are not required, to apply for a PAL, and whether to issue a PAL to particular source is at the discretion of the reviewing authority. PALs offer an alternative method for determining major NSR applicability. If the overall emissions at a source remain below the PAL level, the source can make changes at the source that do not trigger major NSR. This allows sources to respond rapidly to market conditions, while assuring there is no adverse impact to the environment from the change. A PAL also results in significant environmental benefit, by providing the community with an understanding of the long-term emissions impact from a facility, preventing emissions creep (i.e., a series of unrelated individual emissions increases that are below major NSR applicability thresholds), and requiring enhanced monitoring, recordkeeping and reporting to demonstrate compliance with the PAL.

3. Why are we proposing to amend the regulations?

The EPA reads its current PAL and PSD regulations as restricting permitting authorities from issuing certain kinds of GHG PALs. We interpret our current regulations to restrict sources that can obtain GHG PALs to existing major stationary sources, [34] and to not allow sources to rely on the PALs emissions limitation in determining whether GHG emissions are ''subject to regulation.''

The PSD provisions generally define a ''major stationary source'' as a stationary source which emits or has the potential to emit 100 or 250 tpy or more of a regulated NSR pollutant, depending on the type of source.[35] A GHG-only source is a source that emits or has the potential to emit 100/250 tpy GHG on a mass-basis, and emits or has the potential to emit 100,000 tons per year of CO_2e or more, but does not emit or have the potential to emit any other regulated NSR pollutant at or above the applicable major source threshold.[36] Regardless of the amount of GHGs currently emitted, a GHG-only source is a minor source for purposes of PSD, and only becomes major for PSD when it proposes to undertake a change that increases GHG emissions by at least 75,000 tpy CO_2e. Currently, reviewing authorities using the federal PAL provisions [37] can only issue a PAL to a GHG-only source when the source proposes to undertake such a change, thus becoming a major stationary source.[38] As a result, GHG-only sources may not currently use the alternate major NSR applicability provisions provided by a PAL in the same way that existing major stationary source of other regulated NSR pollutants may. Instead, GHG-only sources must wait to obtain a PAL until they actually propose to make a change that qualifies the source as a major stationary source under the PSD program.[39]

Moreover, under current regulations any EPA-issued PAL can only be mass-based. This requirement is due to the fact that PALs are an alternative for NSR, which is triggered by mass-based changes in emissions. Consequently, GHG sources use tpy CO_2e to determine whether a change causes GHG emissions to be subject to regulation, but tpy of mass emissions of the pollutant to determine whether a change results in a major modification. Thus, under the current regulations, sources using the PAL provisions must still monitor both metrics to ultimately determine whether a change triggers major NSR review.

We believe changing the regulations to remove these mass-based restrictions will provide sources with additional operational flexibility, and reduce GHG workload burdens on reviewing authorities by decreasing the number of PSD permit applications reviewing authorities must process for these sources over the long term. Providing an option that allows a source to use a GHG PAL will help streamline the major NSR permitting program and provide more operational flexibility to sources. Being able to establish a PAL would provide planning certainty to sources, and would relieve the current time pressure to issue a PAL permit concurrent with authorization for a planned major modification which could potentially delay that project. We also believe that compliance with a GHG PAL generally assures that the environment remains protected from adverse air impacts resulting from changes a source undertakes in compliance with such a PAL, regardless of which metric is specified to measure GHG emissions in that PAL, because emissions cannot exceed this pre-established level without further review. PALs also provide an incentive for a source to minimize GHG emissions increases from future projects.

A significant rate is a threshold for applying NSR to modifications. Only emissions rate increases above the significant rate trigger major NSR requirements. Currently, a reviewing authority may establish the PAL level for a pollutant by adding its significant rate to baseline actual emissions. Unless a significant emissions rate has been established, the significant rate is effectively zero, i.e., any increase in emissions would trigger NSR.

The EPA did not promulgate a mass-based significant emissions rate for GHG emissions in the final Tailoring Rule. Thus, if a reviewing authority establishes a mass-based GHG PAL, under our current interpretation of the regulations, the PAL may not include any margin above the baseline actual emissions for emissions growth. Absent this margin, a GHG PAL provides less flexibility to a source when compared to PALs for other regulated NSR pollutants.

The proposed rules provides GHG PAL sources with the same kind of flexibility sources currently have for other regulated NSR pollutants by allowing sources to establish a CO_2e-based PAL using the 75,000 tpy CO_2e applicability threshold for GHGs. A reviewing authority could add the 75,000 tpy CO_2e to a source's CO_2e baseline actual emissions to establish the PAL level, because the Tailoring Rule established 75,000 tpy CO_2e as the appropriate rate of emissions increase for the GHG applicability threshold for existing sources. Changing the regulations will also have the effect of streamlining future major NSR applicability determinations for sources that choose a CO_2e PAL, by eliminating the need to evaluate GHG emissions on a mass basis for major NSR applicability as long as the source is complying with the CO_2e PAL, because a CO_2e PAL can function to assure both that GHG emissions are not subject to regulation, and that a change does not trigger a major modification.

[33] 40 CFR 52.21(aa)(2)(v).

[34] 40 CFR 52.21(aa)(1).

[35] 40 CFR 52.21(b)(1)(i)(*a*)–(*b*).

[36] For the purpose of this rule, we term such sources ''GHG-only sources.''

[37] There can be alternative state PAL provisions or they may simply adopt EPA's regulations.

[38] 40 CFR 52.21(b)(49)(v)(b).

[39] Because an anyway source emits or has the potential to emit another regulated NSR pollutant in amounts at or above the major source thresholds, it is a major stationary source, and it may apply for a PAL for its GHG emissions on a mass basis at any time under the current regulations as long as it otherwise qualifies (*e.g.,* has sufficient emissions data to establish a PAL).

In sum, we believe that the current PAL regulations are inconsistent with the outcome achieved when the PAL rules are applied to regulated NSR pollutants other than GHGs, and therefore are overly restrictive with respect to GHG-only sources. Accordingly, we are proposing to amend the major NSR regulations and PAL rules to allow reviewing authorities to (1) issue PALs to GHG-only sources;[40] (2) issue either a mass-based (tpy) or a CO_2e-based PAL to a particular source; (3) allow CO_2e-based PALs to include the 75,000 tpy CO_2e rate of emissions increase applicability threshold; and (4) allow compliance with a GHG PAL to be used as an alternative applicability approach for determining both whether a project is a major modification and whether GHG emissions are subject to regulation. Provided a source complies with a GHG PAL, GHG emissions at the source will not be ''subject to regulation,'' and a project at the source will not result in a major modification. We request comment on each one of these proposals.

In the Tailoring Rule the EPA amended the definition of ''subject to regulation'' to establish a threshold level of GHG emissions that a source must meet, on both a source and project basis, before GHGs to be considered an NSR regulated pollutant for PSD permitting purposes. However, the EPA also made clear that its action had the same substantive effect, and should be treated as if the EPA had revised other components of the definition of ''major stationary source'' to achieve the same effect. Thus, in addressing PALs for GHGs in this rule the EPA is continuing to focus on the thresholds incorporated into the ''subject to regulation'' provision, consistent with the approach in the Tailoring Rule.

4. Options for Allowing GHG-Only Sources To Obtain a GHG PAL

We request comment on two approaches for regulating GHG-only sources under a PAL. We call the first approach the Major Source Opt-in Approach. This approach is consistent with the current restriction that only allows reviewing authorities to issue PALs to existing major stationary sources, but the approach would provide GHG-only sources the ability to become existing major stationary sources, and thus receive PALs for GHGs and any other pollutant emitted by the source. A GHG-only source could become a major stationary source by agreeing to be considered an existing major stationary source, without having a specific qualifying project that increases CO_2e emissions at the source by at least 75,000 tpy CO_2e.

We call the second approach the Minor Source Approach. In contrast to the Major Source Opt-in approach, under the Minor Source Approach a GHG-only source would remain a minor source. A reviewing authority could issue GHG PALs to the GHG-only sources without requiring the source to become an existing major stationary source, and thus could not include PAL limits for non-GHG pollutants.

Under the Major Source Opt-in Approach, we would amend the regulations to allow any existing stationary source that emits or has the potential to emit GHGs in amounts above the first part of the ''subject to regulation'' applicability threshold (currently 100,000 tpy CO_2e) and above the 100/250 tpy major stationary source threshold, to submit an application for a PAL, in which the source agrees to be considered an existing major stationary source for GHG emissions. As long as the source complies with the GHG PAL, it would not trigger the PSD permitting requirements for GHGs for any project, but the regulations would continue to require the source to evaluate whether the change triggers PSD applicability for other regulated NSR pollutants in the attainment or unclassifiable area. This is because PSD applies whenever a major stationary source undertakes a project that results in a significant net emissions increase of any regulated NSR pollutant.

The EPA believes that allowing GHG-only sources to opt into major stationary source status is consistent with the Act. But for the Tailoring Rule, GHG-only sources qualify as ''major emitting facilities,'' because such sources emit or have the potential to emit 100 or 250 tpy GHG. Thus, these sources fall within the statutory scope of sources that, absent the Tailoring Rule, we would have authority to regulate for purposes of PSD. Although we took a limited interpretation of how to exercise this authority through the Tailoring Rule, we believe that the Major Source Opt-in Approach is consistent with the Tailoring Rule's schedule for further phasing-in additional GHG sources into the PSD permitting program.

In the final Tailoring Rule, we indicated that we would base our decision to include additional sources in the GHG permitting programs on an assessment of three criteria. These criteria are: (i) Whether the EPA could develop streamlining measures, (ii) the time that permitting authorities need to ramp up their resources, and (iii) sources' abilities to meet the requirements of the PSD program and permitting authorities' ability to issue timely permits. Each of these criteria supports expanding the PSD permit program to include a source that opts into the GHG PAL regulatory structure. First, while the Major Source Opt-in Approach has the potential to increase the total number of GHG major stationary sources, it does so in a manner that decreases the long-term permitting burden for both the source and the reviewing authority. This is because the source would likely require fewer permit actions over the life of a PAL. Thus, the Major Source Opt-in approach streamlines the PSD permitting program, which will assist permitting authorities when the EPA regulates additional GHG sources under the PSD program. Second, permitting authorities can gain valuable experience in issuing PAL permits that can build staff expertise. This, in turn, helps permitting authorities' efforts to ramp up their PSD permitting programs in a more timely and efficient manner. Third, sources demonstrate an ability to comply with major stationary source permitting requirements by voluntarily seeking a PAL under the Major Source Opt-in provisions. If a source could not comply, then it would not seek a GHG PAL. Moreover, reviewing authorities likely would only agree to issue a PAL if they believe they have the necessary resources to issue the PAL(s), and doing so would not detrimentally affect their obligations to otherwise issue timely permits. In sum, if a source opts-into the program, and a reviewing authority agrees to permit the source, then we believe these sources are properly brought within the PSD permitting program.

Under the Major Source Opt-in Approach, a source could also choose to establish PALs for its non-GHG regulated NSR pollutants to better manage applicability for all pollutants at the source, including those regulated NSR pollutants for which the source is not major. Under this approach, the source will continue to be considered a major source under PSD and title V at the expiration of the PAL (generally 10 years after issuance). If the source is subject to the federal PSD program for GHG emissions, and to a state SIP-approved PSD program for its non-GHG regulated NSR pollutants, then whether a source can apply for, and receive, a PAL for its non-GHG regulated NSR

[40] A GHG-only source is a source that emits or has the potential to emit 100/250 tpy GHG on a mass-basis, and emits or has the potential to emit 100,000 tons per year of CO_2e or more, but does not emit or have the potential to emit any other regulated NSR pollutant at or above the applicable major source threshold.

pollutants will be governed by the applicable SIP-approved regulations and the state reviewing authority. Neither the EPA, nor its delegated authority, would issue PALs for non-GHG regulated NSR pollutants under 40 CFR 52.21, unless a FIP would govern PSD applicability for that non-GHG pollutant. As with the current PAL regulations, the ultimate decision to issue a PAL remains with the reviewing authority, and individual permitting authorities will have to determine whether they will issue PALs for non-GHG pollutants also emitted from a source that receives a GHG PAL through the Major Source Opt-in Approach.

We are concerned, however, about the potential impact on reviewing authorities of allowing GHG-only sources to obtain PALs for all their regulated NSR pollutants, as this could cause a short-term increase in regulatory burden on permitting authorities at a time when they are ramping up their programs to address other GHG major stationary sources. We request comment on this aspect of the Major Source Opt-in Approach and welcome suggestions for refining the approach to address concerns with short-term workload burdens for permitting authorities.

Under the Minor Source Approach, we would amend the regulations to allow a GHG-only source to submit an application for a GHG PAL, and would also allow the source to maintain its minor source status. A GHG-only source that complies with its GHG PAL will not trigger PSD permitting requirements for GHGs, but could trigger PSD for other regulated NSR pollutant if it undertakes a change that increases emissions by a ''major'' amount for any non-GHG regulated pollutant. *See* 40 CFR 51.166(b)(1)(i)(*c*). That is, this approach would authorize permitting authorities to use the PAL program for minor sources only to regulate GHG emissions.

Moreover, under the Tailoring Rule existing minor sources that emit only GHGs, but no other regulated pollutants in major amounts, must determine whether any project will result in GHG emissions that are subject to regulation (on a CO_2e basis), and correspondingly will also result in a major modification (on a mass basis). Because GHG-only sources must undertake these determinations for any change, even those that would not make the source major for GHGs, we believe that extension of the PAL program to these sources through the Minor Source Approach is consistent with the purposes and design of the PAL program—to allow use of a PAL as an alternate major modification applicability approach.

Issuing PALs to GHG-only sources that remain minor sources does not conflict with the basis for the current PAL rules. When we promulgated the PAL rules in 2002 (67 FR 80186), we limited the application of the PAL provisions to existing major stationary sources only. We included this provision based on our decision to limit PALs to sources that had historical emissions through which the reviewing authority could establish a baseline actual emissions level. New major stationary sources do not have historical actual emissions from which a reviewing authority can establish an actuals PAL, and so we declined to include these sources in the actuals PAL program.

When we originally promulgated the PAL rules, we also chose not to extend the PAL program to minor (source) NSR permit programs, because PALs are an alternate major NSR applicability provision to determine whether a project results in a major modification, and we did not believe the program would be useful to minor sources. At that time, the rules generally required only existing major stationary sources to undertake a major modification applicability analysis to determine whether a change triggers PSD review.[41] Given the unique ''subject to regulation'' PSD applicability requirement for GHGs, wherein an existing source that emits major amounts of GHGs is a major stationary source only at the time it proposes to undertake a project that will result in an emissions increase of 75,000 tpy CO_2e or more, we do not believe that extending the PAL provisions to GHG-only sources runs afoul of the reasoning we provided when initially limiting the PAL program to existing major stationary sources.

As explained previously, we propose to limit the Minor Source approach to allow reviewing authorities to establish PALs only for GHG emissions, and not for other regulated NSR pollutants for which the source remains a minor source. Because the GHG-only source remains a minor source (absent any other PSD-triggering change) and, generally, will not trigger a major modification applicability analysis for increases in other regulated NSR pollutants, we believe it unnecessary to extend the PAL authority under this approach to other pollutants. Moreover we recognize that extending the PAL program in that way could place a burden on permitting authorities and redirect resources needed to issue permits to other GHG major stationary sources.

The Minor Source Approach is consistent with the CAA in that it regulates sources that but for the Tailoring Rule would be major stationary sources based on the mass of their GHG emissions. This approach is also consistent with our Tailoring Rule principles. But unlike the Major Source Opt-in Approach, which defines the scope of pollutants included in the PAL based on an individual permitting authority's discretion and ability to regulate a given source, under the Minor Source Approach, the EPA has determined that the scope of the program is limited only to a source's GHG emissions and could not include PAL limits for non-GHG pollutants emitted in amounts below the major source levels. Again, as with the Major Source Opt-in Approach, the Minor Source Approach fulfills our streamlining goals by bringing more sources into the major NSR permitting provisions, in a manner that best manages reviewing authorities' long-term permit burden.

We request comment on both the Major Source Opt-in Approach and the Minor Source Approach. We also request comment on whether we should finalize both approaches. That is, sources would have the ability, consistent with the ultimate decision of its reviewing authority, either to opt into major stationary source status and establish PALs for all pollutants, or to maintain minor source status and obtain a PAL for GHG emissions only.

5. Extending PALs to GHGs on a CO_2e Basis and Using PALs To Determine Whether GHG Emissions Are ''Subject to Regulation''

Currently, the EPA reads the PAL regulations to allow reviewing authorities to establish a GHG PAL only on a mass basis. Today we propose to allow reviewing authorities to establish GHG PALs on either a mass basis or a CO_2e basis. More specifically, we propose to allow reviewing authorities to establish a CO_2e-based GHG PAL by adding up to an amount equal to the emissions increase contained in the ''subject to regulation'' applicability threshold (e.g., 75,000 CO_2e) to the source's baseline actual emissions. We also propose to allow GHG PALs, either on a mass basis or a CO_2e basis, to serve as an alternate applicability approach for determining whether GHG emissions are subject to regulation. That is, rather than applying the emissions increase tests (significant emissions increase and significant net emissions increase)

[41] The provisions in 40 CFR 51.166(b)(3)(iii) illustrate an exception to this general rule but we did not contemplate that exception in creating the PAL rules in 2002.

currently contained in the ''subject to regulation'' definition, a source could demonstrate that GHG emissions are not ''subject to regulation'' by complying with a GHG PAL. Compliance with a GHG PAL would be used as an alternative applicability approach for determining that the source neither causes GHG emissions to be subject to regulation, nor causes the GHG source to have a major modification.

We further believe that it is necessary to allow the alternative applicability provision to be included in ''subject to regulation'' determinations for GHG PALs, because failing to do so would negate the flexibility gained by creating a GHG PAL. This is because without the changes EPA is proposing, sources would still be required to monitor individual emissions changes using the procedures in 40 CFR 52.21(a)(2)(iv) to determine whether a source triggers the subject to regulation definition. The determination of whether GHGs are ''subject to regulation'' uses procedures that rely on an emissions-unit-by-emissions-unit analysis, and a shorter contemporaneous period to measure emissions changes, neither of which are required under a PAL. We believe that the enhanced recordkeeping, reporting and monitoring burdens of a PAL, and the environmental benefits resulting from a PAL, warrant extension of the alternate applicability provisions to subject to regulation determinations to assure that the PAL provides the intended flexibility to sources.

When we proposed the Tailoring Rule, we proposed to include applicability thresholds within the definitions of major stationary source and major modification, based on tpy emissions of CO_2e. We also proposed to establish a CO_2e-based significant emissions rate. In the final rule, we changed our regulatory approach and instead included these applicability thresholds within the ''subject to regulation'' definition, and we did not revise the definition of significant to include a CO_2e-based emissions rate. We did so, in part, because we intended this change in regulatory structure to facilitate more rapid adoption of the rules by reviewing authorities. Nonetheless, we intended the definition of ''subject to regulation'' to function in tandem with the definitions of ''major stationary source'' and ''major modification'' to determine whether a given project triggers PSD preconstruction permit requirements. That is, if a source emits GHG emissions at a level that causes the emissions to become ''subject to regulation,'' that same level of emissions increase will likely cause the source to be a major stationary source and trigger PSD requirements as a major modification. Accordingly, since the 75,000 CO_2e applicability threshold contained in the second part of the ''subject to regulation'' definition works in tandem with the ''major modification'' provision to determine whether major NSR applies we are proposing that a CO_2e-based GHG PAL can be established by adding up to an amount equal to 75,000 CO_2e to the source's baseline actual emissions as this is the appropriate applicability threshold for CO_2e tpy GHG.

In our proposed Tailoring Rule, we noted that, in rare instances, there may be an exception to this general principle, if a source emits very small amounts of a particular non-CO_2 GHG that carries a very large GWP. 74 FR 55330. We noted our concern that the proposed rule could cause sources, whose mass emissions do not meet the major stationary source tpy threshold, to nonetheless be regulated under the permit programs. When we finalized the Tailoring Rule using the subject to regulation approach, we resolved this concern by retaining both a mass-based threshold and a CO_2e-based threshold. Our intent in retaining both thresholds was to assure that no source was subject to PSD that would not otherwise meet the statutory criteria for treatment as a major stationary source.

This same regulatory structure creates the opposite effect for sources operating under a GHG PAL. Instead of providing GHG PAL sources with the ability to use either threshold to show that they are not a major stationary sources and that major NSR does not apply, sources must monitor both thresholds to prove this outcome under the current rules. This is because a mass-based GHG PAL cannot assure that there is no increase in CO_2e tpy GHG. Expanding the GHG PAL program to allow GHG PALs to be used as an alternative applicability provision for both the major modification and ''subject to regulation'' determinations resolves this dual threshold issue. We also believe that we may properly allow GHG PALs to be expressed on either a mass or CO_2e-basis, because, in essence, we intended the subject to regulation determination to be functionally equivalent to making a major modification applicability determination for GHG sources. We resolve our previous concern that relying on a single metric might lead to over-inclusion of sources that do not meet the statutory threshold for the PSD program by limiting the GHG PALs program to GHG-only sources, which are defined as those sources that, by definition, meet the 100/250 tpy major stationary source threshold. We request comment on all aspects of this proposal.

6. Can a GHG source that already has a mass-based GHG PAL obtain a CO_2e-based PAL once we issue final changes to the PAL rules?

We are proposing to add transition provisions to the PAL regulations that would allow a GHG source that has a mass-based GHG PAL to convert to a CO_2e-based GHG PAL once, at the source's option, and if agreed to by the reviewing authority. We intended these provisions to provide integrity to the PAL provisions, and assure that sources avoid casually opting out of the PAL program, rather than go through the rigorous procedures for increasing the level of the PAL.

The current PAL regulations do not contain specific provisions for dissolving an established PAL during the PAL term, but contain provisions for when a PAL expires. It is inappropriate to apply these rigorous procedures to sources that would have elected to seek a CO_2e-based PAL in lieu of a mass-based PAL, had such an option been available. We propose to include regulatory language that the expiration of PAL provisions do not apply when a source elects to convert from a mass-based GHG PAL to a CO_2e-based PAL. Instead, a source could transition to a CO_2e-based PAL and the permitting authority could dissolve the mass-based PAL without retaining the mass-based PAL level as a restriction on allowable emissions.

We also propose to include provisions that allow the mass-based GHG PAL to be converted to a CO_2e-based GHG PAL in the middle of the PAL effective period. Under the transition provision, the reviewing authority would propose to dissolve the existing mass-based PAL permit at the time it proposes the new CO_2e-based PAL permit for public comment. The reviewing authority would establish the new CO_2e-based GHG PAL following the standard procedures (10-year lookback for baseline actual emissions, 10-year PAL effective period, etc.) in the current PAL regulations. Once a final CO_2e-based PAL permit is issued, the permitting authority may also finalize its proposed action to dissolve the mass-based PAL permit and remove any applicable requirements from the title V permit following the appropriate title V procedures. This would, in essence, create a new PAL and establish a new 10 year term.

We also propose to allow a reviewing authority to use a slightly different procedure for this conversion from the standard PAL procedures. If the baseline

actual emissions period the reviewing authority used to establish the mass-based GHG PAL is no longer within the 10 year lookback period currently available to the source, then the transition provisions would allow that source a one-time conversion of a mass-based GHG PAL to a CO_2e-based GHG PAL using the same baseline actual emissions period used to establish the mass-based GHG PAL. The new PAL effective period would be the remainder of the mass-based GHG PAL's effective period. For example, if a reviewing authority issued a mass-based GHG PAL to a source that became effective in 2011, that PAL's effective period runs for 10 years through 2021. If the same source converts that mass-based GHG PAL to a CO_2e-based PAL in 2014, and elects to use the expired, mass-based GHG PALs baseline actual emissions years, then the CO_2e-based GHG PAL would be effective for the remaining 7 years of the mass-based GHG's PAL effective period.

We request comment on these procedures for converting a mass-based GHG PAL to a CO_2e-based GHG PAL. Specifically, we request comment on whether there are existing mass-based GHG PALs for which transition provisions are needed. More specifically, should we allow such a transition, or should we decline to provide transition provisions? If we decline to provide a transition should we instead require sources either to maintain both PALs, or require the sources to comply with a source wide emissions cap equal to the PAL level that functions as a synthetic minor limitation? We also request comment on whether we should provide a temporary transition provision to allow sources to convert from the mass-based GHG PAL to the CO_2e-based GHG PAL only for a limited time after the effective date of the regulatory changes, or whether the procedures should remain available for the duration of the PAL provisions. Specifically, we request comment on whether there are implications for major NSR compliance if sources are allowed to switch from a mass-based PAL to CO_2e-based PAL at any time, or whether providing the option for the duration of the program could encourage certain types of environmentally preferable projects.

7. How would we change the regulatory provisions to implement PALs for GHG-only major sources?

To implement our proposed changes, we would revise a number of existing regulatory provisions, depending on the specific approach selected. Under the Major Source Opt-in Approach, we propose to change the definition of major stationary source at 40 CFR 52.21(b)(1) to add a paragraph that defines Major Source Opt-in GHG-only sources as major stationary sources. Under the Minor Source Approach, we propose to revise the applicability paragraph for the PAL provisions at 40 CFR 52.21(aa)(1) to include GHG-only sources.

In addition, under the Major Source Opt-in Approach, we propose to revise the PAL Permit Application Requirements provisions at 40 CFR 52.21(aa)(3) and (4) and Contents of the PAL Permit provisions at 40 CFR 52.21(aa)(7) to include provisions for opting into existing major stationary source status.

Under either approach, we would: (1) Revise the PAL rules to add transition provisions to 40 CFR 52.21(aa) for converting from a mass-based PAL to a CO_2e-based PAL including revisions to the PAL expiration provisions; (2) add a paragraph to the ''subject to regulation'' definition at 40 CFR 52.21(b)(49) and the PAL applicability section at 40 CFR 52.21(aa)(1) to indicate that a source that complies with a GHG PAL is not subject to regulation for GHG emissions; (3) revise the PAL rules at 40 CFR 52.21(aa)(6) to allow CO_2e-based PALs to include the 75,000 tpy CO_2e rate of emissions increase applicability threshold by adding this amount to a source's baseline actual emissions; and (4) revise the definition of PAL and PAL pollutant at 40 CFR 52.21(aa)(2)(v) and (x) to include CO_2e as a metric of GHG emissions.

B. Synthetic Minor Source Permitting Authority for GHGs

1. What is the EPA proposing?

We are proposing to create synthetic minor permit authority, within the existing federal PSD regulations in 40 CFR 52.21, for the purpose of issuing ''subject to regulation'' synthetic minor permit limitations on a CO_2e basis for GHGs. We are also proposing to amend the federal minor NSR program in Indian country for the purpose of issuing synthetic minor permit limitations for GHGs. These regulatory changes would allow certain sources or projects that might otherwise be required to obtain a GHG PSD permit, pursuant to 40 CFR 52.21, to obtain a ''subject to regulation'' limitation that restricts the source's GHG emissions below the ''subject to regulation'' threshold(s). That is, for sources located in a jurisdiction in which the federal PSD permitting program applies, we propose a mechanism that would allow the EPA, or its delegated agent, to issue a permit containing synthetic minor limitations for GHGs to any source that emits or has the potential to emit GHGs above the applicable subject to regulation thresholds and that voluntarily requests a restriction on its PTE. Although we would establish this program using our PSD permitting authority, a synthetic minor permit limitation issued under this authority could also effectively limit the source's GHG PTE for purposes of title V applicability. As a general matter, we believe that synthetic minor limits for GHGs should be available as an option for sources that would prefer to take a legally and practicably enforceable limitation on GHG emissions in order to avoid major source permitting requirements. We believe that many state and local permitting authorities will already have mechanisms in place to issue such GHG synthetic minor limits to sources that request them, including title V permitting programs, state minor source permitting programs, or federally enforceable state operating permit programs. Nonetheless, we request comment on whether permitting authorities implementing SIP-approved PSD permitting programs lack mechanisms to create synthetic minor limitations for GHGs, and if so, how that gap in permitting authority or mechanism could best be filled.

It is important to note that we only propose to issue synthetic minor permits for GHG emissions, not for other regulated NSR pollutants, and we will only do so for sources located in areas where the EPA is the GHG permitting authority (including areas subject to a GHG FIP). These synthetic minor permits would also be available where the federal PSD program is implemented by a state permitting authority under a delegation agreement because delegated states issue PSD permits on behalf of the EPA in those areas under 40 CFR 52.21. We, however, are not proposing to issue synthetic minor source limits for non-GHG pollutants under this rule. States and some tribes operate minor source permitting programs that cover these other pollutants, and the EPA also operates a minor source permitting program in Indian country. If a source wishes to obtain a synthetic minor limit for any other pollutant, it should seek that limit under the applicable minor source program.

The EPA has long recognized synthetic minor permits as a way to restrict a source's PTE and thus avoid major source NSR and title V permitting

requirements.[42] While we discussed the use of synthetic minor permits for establishing PTE restrictions on GHG emissions in our proposed Tailoring Rule, we expressed concerns that establishing GHG synthetic minor limitations in individual permits could overwhelm reviewing and permitting authorities based on the sheer number of sources that we anticipated would apply for PSD permits. Thus, we proposed to focus our attention on developing category specific approaches for limiting PTE.

Since finalizing the Tailoring Rule, we reconsidered this conclusion, and now believe that establishing synthetic minor limitations for individual sources could increase permitting authorities' capacity to regulate GHG emissions by providing experience in addressing emissions limitations, and monitoring, recordkeeping and reporting requirements specific to GHG emissions. We also believe that it would lead to an overall reduction of permitting burden in that synthetic minor permits generally require fewer administrative resources than full PSD permitting and title V permitting, to which these sources could otherwise be subject.

Moreover, streamlining ideas often result from repeat experiences. After issuing permits that share common features, a reviewing or permitting authority might formulate new ideas for effective streamlining techniques. We now believe that issuing synthetic minor permits is a key component of our overall efforts to gain experience in permitting GHG sources to phase additional sources into the GHG program, because it can help manage sources currently subject to the program and help identify opportunities for further streamlining the GHG permitting programs. Moreover, allowing sources to obtain a synthetic minor limitation, in lieu of triggering major NSR requirements, encourages sources to effectively minimize project emissions through efficiency improvements or other measures such that the total GHG emissions to the environment from the project are lower than might otherwise occur.

We acknowledge that other mechanisms may currently exist to establish synthetic minor limitations for GHGs. We do not intend today's proposal to supplant or supersede other available mechanisms for creating synthetic minor limitations. Rather, our intent is to ensure that we are able to issue GHG synthetic minor limits in the areas subject to the federal PSD permitting program for GHGs to avoid a potential gap in synthetic minor permitting authority and to ensure that we are able to efficiently manage our administrative resources for the federal PSD program. Notwithstanding today's proposal, we encourage states to use appropriate existing mechanisms, or to create new authority if needed, to issue synthetic minor limitations for GHGs.

2. What is synthetic minor limitation, and what is its function?

A synthetic minor limitation is a legally and practicably enforceable restriction that a source voluntarily seeks to avoid major stationary source requirements, such as the PSD or title V permitting programs. Synthetic minor limitations allow sources to avoid these permit programs in two ways. First, a reviewing or permitting authority can issue a synthetic minor limitation to assure that a stationary source does not emit above the major stationary source threshold, and therefore, that the stationary source remains a minor source for either one or both permit programs. Second, a reviewing or permitting authority can issue a synthetic minor limitation to assure that emissions increases from a project remain below the relevant significant rate for a specific regulated NSR pollutant.

As we explained in the Background Section, our regulations define a ''major stationary source'' for purposes of PSD as a stationary source that emits, or has a potential to emit, at least 100 tpy, if the source is in one of 28 listed source categories, or, if the source is not, then at least 250 tpy, of a regulated NSR pollutant. CAA section 169. A ''major stationary source'' for title V includes sources that emit or have the potential to emit above 100 tpy or more of any air pollutant subject to regulation. CAA sections 501, 302.[43] We refer to these 100 or 250 tpy amounts as the major source applicability thresholds. These thresholds are computed on a mass-basis for each regulated NSR pollutant or title V air pollutant.

Because the definition of major stationary source relies, in large part on, a source's ''potential to emit,'' the definition of ''potential to emit'' is extremely important in determining the applicability of PSD and title V for a particular source. The PSD regulations define PTE as:

> The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of fuel combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.[44]

40 CFR 52.21(b)(4), 51.165(a)(1)(iii), 51.166(b)(4). The title V regulations are similar. 40 CFR 70.2.

If a source has no practicably enforceable emissions limitations that restrict the amount of a pollutant the source may emit, and the source has no restrictions on its capacity utilization or hours of operation, we require the source to use its highest expected emissions rate and ''assume operation at maximum design or achievable capacity (whichever is higher) and continuous operation (8760 hours per year)'' to compute its potential to emit.[45] Thus, if a source will actually emit below its maximum capacity to emit, a synthetic minor limitation can play an integral role in limiting the source's PTE to a level below this maximum level. If the source accepts legally and practicably enforceable limits and requirements sufficient to limit its PTE, that source can be treated as a minor source, rather than a major source, for purposes of our regulations.

Synthetic minor limitations are also important for determining whether a project will result in an emissions increase that exceeds the significant rate for a regulated NSR pollutant, thus triggering PSD permitting requirements. While the significant rate for GHGs is currently zero tpy, thus making this type of synthetic minor limit less practical for GHG sources, the methods used to determine such emission increases are applicable to GHGs because they are also used to determine whether GHGs are ''subject to

[42] *See, e.g.,* Guidance on Limiting Potential to Emit in New Source Permitting (June 13, 1989); Guidance and Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits (Jan. 25, 1995). The rules proposed here for limiting potential to emit should be read in light of our extensive prior guidance on this issue.

[43] As explained in the Tailoring Rule, while the statutory provision addresses any air pollutant, we have historically applied the PSD and title V programs only to pollutants subject to regulation.

[44] 40 CFR 52.21(b)(4). Following two court decisions, *National Mining Association* v. *EPA,* 59 F.3d 1351 (DC Cir.1995) and *Chemical Manufacturers Ass'n* v. *EPA,* No. 89–1514 (DC Cir.1995), we clarified that the term ''federally enforceable'' should be read to mean ''federally enforceable or legally and practicably enforceable by a state or local air pollution control agency.'' Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit, at 3 (Jan. 22, 1996).

[45] *See* Memo from Terrell E. Hunt, Associate Enforcement Counsel Air Enforcement Division Office of Enforcement and Compliance Monitoring, and John S. Seitz, Director Stationary Source Compliance Division Office of Air Quality Planning and Standards, June 13, 1989.

regulation.'' To compute whether a project will result in a ''significant emissions increase'' under the federal PSD regulations, a source has the option of using either ''projected actual emissions,'' or PTE to estimate post-change emissions. A source opting to use PTE can reduce the amount of its PTE by accepting legally and practicably enforceable limitations on its operations. To compute whether a project will result in a ''significant net emissions increase,'' a source must compute emissions increases from projects that occur during the contemporaneous period. A creditable emissions increase is computed by comparing ''baseline actual emissions'' to the unit's post-change PTE. A permitting authority can use a synthetic minor limitation to limit an emissions unit's post-change PTE to reduce the amount of emissions increase that is creditable in a net emissions increase analysis. In computing a creditable emissions decrease, a source may only take credit for an emissions decrease that is legally and practicably enforceable. Thus a reviewing authority can use a synthetic minor limitation to create a creditable emissions reduction. 40 CFR 52.21(b)(3)(vi)(b).

We call any permit used to restrict a source's PTE below either the major stationary source threshold or below the significant rate a ''synthetic minor permit.'' We call a source that accepts limitations on its operations a ''synthetic minor source.'' This is in contrast to a ''true'' or ''natural minor'' source, which is a source whose PTE remains below the threshold without any additional restrictions on the source. Again, because the major stationary source threshold and significant rate are mass-based for all non-GHG regulated NSR pollutants and title V air pollutants, synthetic minor limitations, historically, have reduced a source's mass emissions.

3. What is a ''subject to regulation'' limitation?

A ''subject to regulation'' synthetic minor limitation is unique to the GHG permitting programs. Instead of allowing a source to avoid the PSD or title V permit programs by establishing PTE limitations that reduce tpy mass emissions, a ''subject to regulation'' limitation reduces CO_2e-based GHG emissions. This unique type of limit is specific to GHGs, because of the unique way in which the EPA regulated GHG emissions through the Tailoring Rule.

As we explained in the Background Section, a source must meet two applicability requirements to trigger PSD permitting requirements for GHGs: (1) It must emit GHGs in amounts—calculated on a CO_2e basis—that make GHGs ''subject to regulation,''[46] and (2) it must also emit GHGs in amounts—calculated on a mass basis—that qualify as a major stationary source (*e.g.,* 100 or 250 tpy) and, if relevant, qualify as a major modification (*e.g.,* net emissions increase of more than 0 tpy). For title V, GHGs are ''subject to regulation'' at a stationary source that emits or has the potential to emit 100,000 tpy CO_2e. A ''subject to regulation'' limitation prevents a source from emitting GHGs in amounts that exceed the relevant ''subject to regulation'' applicability threshold that we established in the final Tailoring Rule. Accordingly, just like other synthetic minor limitations, a source that complies with a ''subject to regulation'' limitation can avoid triggering PSD or title V GHG permitting requirements.

As noted previously, in the Tailoring Rule, although the EPA amended the definition of ''subject to regulation'' to establish a level of GHG emissions that a source must meet, on both a source and project basis, before GHGs will be considered an NSR regulated pollutant for PSD permitting purposes, the EPA also made clear that its action had the same substantive effect, and should be treated, as having revised other components of the definition of ''major stationary source'' to achieve the same effect. Even so, because in the Tailoring Rule it was the ''subject to regulation'' provision that the EPA chose to incorporate the phase-in thresholds, in this proposal concerning PALs, the EPA is continuing to focus on the ''subject to regulation'' provision as the codification of the Tailoring Rule requirements, to be consistent with the approach in Tailoring Rule.

Like the major stationary source applicability threshold, the ''subject to regulation'' threshold relies on the concept of PTE. And like the major modification significant rate, the subject to regulation threshold also relies on PTE to compute changes in GHG emissions at the source. Accordingly, the EPA proposes to create new regulatory language to affirm the EPA's and other reviewing and permitting authorities' ability to establish limitations on a source that prevent a source from emitting GHG emissions above subject to regulation thresholds on a source-wide basis or for individual modifications.

Because we are not proposing to amend the regulatory definition of PTE, consistent with the EPA's current policy, we will recognize legally and practicably enforceable restrictions for determining whether a source's PTE is below the subject to regulation threshold and for determining whether an individual modification is below the subject to regulation threshold. As with limitations on ''potential to emit'' in traditional synthetic minor permits under our current policy, these restrictions need not be federally enforceable as long as they are enforceable by the permitting authority.[47]

4. Why does the EPA need authority to issue synthetic minor source permits?

In general, the EPA does not have a federal permitting program for minor sources. Although the EPA recently finalized a minor NSR permitting program for Indian country, that program did not affect permitting outside of Indian country or include regulation of GHG emissions.[48] The EPA is now the GHG permitting authority in areas subject to a PSD FIP, including Indian country, but does not have a generally applicable minor source permitting program that the EPA can use to restrict GHG PTE for sources that might want to request voluntary limitations to avoid PSD permitting for GHGs.[49] In these areas it is not clear whether sources will be able to obtain synthetic minor limits for GHGs from states or local permitting authorities through other permitting mechanisms, or through any other cognizable mechanisms for establishing a synthetic minor limit. Without a federal synthetic minor permitting program for GHGs, a source that would be subject to PSD permitting requirements because of a project's potential GHG emissions, but that would be willing to reduce emissions from the source or project to avoid those requirements, might not

[46] Previously in this preamble we refer to the two-step phase-in thresholds 75 FR 31516.

[47] We may alter this policy in final response to address the Courts' decisions in *National Mining Association* v. *EPA,* 59 F.3d 1351 (D.C. Cir.1995) and *Chemical Manufacturers Ass'n* v. *EPA,* No. 89–1514 (D.C. Cir.1995).

[48] *See* 76 FR 38748 (2011) (promulgating Tribal minor source rule).

[49] The EPA recently increased the number of areas in which it is the PSD permitting authority. On December 30, 2010, the EPA imposed a partial PSD FIP for GHGs in some jurisdictions in the Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan. Once that FIP became effective, the EPA became the GHG PSD permitting authority for seven states: Arizona: Both Pinal County and Rest of State (excluding Maricopa County, Pima County, and Indian Country), Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming. In addition, the EPA has long been the PSD permitting authority in a few other states, in Indian country, and in some areas of the Outer Continental Shelf.

have a viable permit mechanism for committing to these emissions reductions and making them enforceable. Thus, we are proposing to fill this gap in federal regulatory authority, because we believe doing so is important to our GHG phase-in efforts and permitting authorities' ability to manage their GHG permit workload (including our ability to efficiently issue GHG permits), and because we believe that synthetic minor limitations for GHGs can result in increased environmental benefit.

We believe that synthetic minor limits for GHGs provide a valuable mechanism to help manage GHG permitting burden and potentially reduce GHG emissions, and that such limits should generally be available as an option for sources that would prefer to take a legally and practicably enforceable limitation on GHG emissions in order to avoid major source permitting requirements. Before the Tailoring Rule, state and local reviewing authorities predominantly issued synthetic minor permits to sources, even when the EPA was the permitting authority for the PSD permits. State and local agencies used their SIP-approved minor NSR permit authority, or in some instances their Part 70 permit authority or their federally enforceable state operating permit program, to issue permits to a source that requested synthetic minor permit restrictions. Recently, the EPA assumed GHG PSD permitting authority for a number of jurisdictions.[50] In many of these jurisdictions, as well as jurisdictions in which the EPA has long been the PSD permitting authority, state, local and tribal agencies may lack mechanisms to create restrictions on a source's potential to emit GHG emissions. This could occur if their minor NSR program regulations do not include GHG emissions or perhaps if it only includes GHG emissions on a mass basis, and if they do not have any other legal mechanism under which they could issue a synthetic minor limit for GHGs. As we noted in the proposed Tailoring Rule, states may but are not required to regulate GHG emissions through their minor NSR programs. Accordingly, if a gap in minor NSR permitting authority exists it may continue to exist. On the other hand, these states may have other viable mechanisms for issuing synthetic minor limits for GHGs, which might alleviate the potential synthetic minor permitting gap.

To better understand the extent of state, local and tribal authorities' synthetic minor GHG permitting authority, we request comment on whether there is a minor source permitting gap in areas subject to EPA permitting authority for PSD permits for GHG. For each state in which the EPA is the GHG PSD permitting authority, we request information on the states' current efforts to interpret or amend their minor NSR permit authority to include GHG emissions, and on other mechanisms that may be available to create synthetic minor limitations on a source's GHG emissions. If there is a gap in either permitting authority or available mechanisms for issuing synthetic minor permits for GHGs, we request input on how that gap could best be filled. We are also requesting comment on whether there are sufficient permitting mechanisms and permitting authority to create GHG synthetic minor limitations in areas subject to a SIP-approved PSD permit program for GHGs. If a gap exists outside of federal GHG PSD permitting areas, we request suggestions for ways to address that gap.

5. What are the benefits to a federal GHG synthetic minor permit program?

A federal GHG synthetic minor permit program will increase EPA's GHG permitting capacity and provide valuable knowledge and experience that the EPA can use to develop effective streamlining methods that assist in the EPA's phase-in of the GHG PSD and title V permit programs to statutory levels. It will also assist the EPA in managing the GHG permit workload for sources already potentially subject to permitting at existing applicability thresholds, and may result in enhanced environmental protection compared to permitting a source as a major source through PSD and/or title V.

We believe that creating federal authority to issue synthetic minor permits to restrict a source's GHG PTE will decrease the long term permit burden on the EPA (and eventually reviewing and permitting authorities if they assume the role for PSD and/or title V permit issuance) by allowing sources to avoid PSD permitting when their actual emissions will not exceed the major source applicability threshold and the subject to regulation thresholds. In addition, such federal authority could reduce state and federal title V permitting burdens, because a PTE limit may be structured in such a way that it also allows a source to avoid the need to undergo title V permitting. We believe that the cost and level of burden for sources applying for a synthetic minor permit, and for permitting authorities to issue the permit, are generally far lower than issuing either a PSD permit or a title V permit. We request information about permitting authorities' and sources' experiences in this regard.

Moreover, the ability to apply for synthetic minor permits can result in greater environmental benefits than those obtained through a PSD permit, because it creates an incentive for sources to reduce emissions to levels below the applicability thresholds. For example, to accommodate a need for an increase in capacity, suppose a source has the option of either modifying an old, inefficient existing emissions unit to increase its capacity, or adding a new, high efficiency, lower emitting emissions unit. Under the federal PSD regulations, the post-change emissions for a new emissions unit are equal to that unit's PTE, while the source may use the projected actual emissions to estimate post-change emissions for the existing emissions unit. Suppose the source only operates 16 hours a day. If the source modifies an existing emissions unit, it may project its emissions using the anticipated 16 hours of operation. In contrast, unless the source can obtain a legally and practicably enforceable restriction on its hours of operation, to determine its PTE, it must calculate emissions for the new emissions unit assuming a full day (24 hours) of operation. As a result, PSD may be triggered for the addition of the new emissions unit, while PSD may not be triggered for the modification of the existing unit. Depending on the cost of emissions controls, and the delay in obtaining the preconstruction permit, the source may choose to modify its existing emissions unit, rather than install the environmentally preferable new emissions unit if it cannot obtain a PTE limit. Providing the EPA the ability to issue synthetic minor permits for GHG emissions gives the EPA a tool to avoid this outcome.

Finally, because we believe that synthetic minor permits generally require fewer administrative resources than full PSD permitting, establishing this synthetic minor program allows permitting authorities to focus greater resources on larger sources that, for whatever reason, cannot or do not want to restrict the emissions to lower levels.

Accordingly, for all the reasons described here, as part of the EPA's effort to phase-in the permitting requirements for GHGs, the EPA proposes to add authority to issue synthetic minor permits to sources for which the EPA, or its delegated agent, is the GHG PSD permitting authority. We propose to add the authority to issue CO_2e-based synthetic minor permits to sources whose potential emissions are above the statutory major source

[50] *See* FN 33 above.

threshold (*i.e.,* 100 or 250 tpy GHG) on a mass basis or the subject to regulation thresholds on a CO_2e basis.

We request comment on our conclusion that a federal synthetic minor permit program will assist in the EPA's efforts to phase-in the GHG permit program and efficiently manage its GHG permitting resources. We also request comment on our conclusion that synthetic minor permits can achieve enhanced environmental protection.

We also note that a synthetic minor limit on GHG emissions could further reduce administrative burdens under the title V permitting program for two reasons. First, as long as the title V GHG applicability threshold is equal to or higher than the PSD threshold, any synthetic minor limit that establishes GHG emissions below the PSD threshold would also prevent such sources from becoming title V sources based on their PSD major source status and/or applicable PSD requirements for GHGs. Second, if the synthetic minor permit restricts GHGs below the subject to regulation threshold for title V, such sources would not qualify as title V sources because of their GHG emissions alone. Of course, if such a source qualifies as a title V source based on their emissions of a non-GHG pollutant or based on title V applicable requirements, that source would still be required to comply with those title V obligations, regardless of the synthetic minor limit for GHGs.

6. What is the legal rationale for EPA's GHG synthetic minor source permitting authority?

Our authority to issue GHG synthetic minor permits arises from the fact that, but for the Tailoring Rule, the sources eligible for this type of permit would qualify as ''major emitting facilities'' under CAA section 169 because they emit or have the potential to emit more than 100 or 250 tpy GHGs on a mass basis, depending on the source category. As a result, we interpret CAA section 165 to convey to PSD permitting authorities, including the EPA, the legal authority to issue preconstruction permits to these sources. We note that we do not expect that sources at or near the 100/250 tpy levels would seek such permits at this time, since such sources are unlikely to trigger PSD under the current applicability tests. Instead, we expect that larger sources would avail themselves of this option.

Although CAA section 165 by its terms authorizes the EPA to issue permits to major sources, and sources to whom we issue a GHG synthetic minor source permit are, in many instances, not major sources, we propose that under the present circumstances, CAA section 165 authorizes the EPA to issue these permits. As noted, these sources would be major sources but for the Tailoring Rule, and as explained in that rule, the administrative burden associated with immediately implementing the PSD program at statutory levels for GHGs would have crippled the program. Thus, we decided to tailor the program and phase-in the permitting requirements to ensure that the PSD permitting program would be administrable for GHGs. Similar to the approach in the Tailoring Rule, we view the GHG synthetic minor program as another tool to help ensure that the PSD program for GHGs can be administered in an effective and efficient manner. Because the GHG synthetic minor program will have those effects, CAA section 165 may be read to authorize it. CAA section 301(a)(1), which authorizes the Administrator ''to prescribe such regulations as are necessary to carry out his functions under [the CAA],'' provides additional authority.

7. What changes would EPA make to the PSD regulations to allow EPA to issue GHG synthetic minor permits?

We are proposing to change both the federal PSD permitting program in 40 CFR 52.21 and the federal minor NSR program in Indian country in 40 CFR Part 49. For the federal PSD permitting program, we propose to add a new § 52.21(dd) to the existing PSD regulations. The proposed regulatory provisions are similar to the requirements we established in Indian country in 40 CFR Part 49, most particularly at 40 CFR 49.158. The proposed provisions address permit application and permit content requirements, as well as requirements for monitoring, recordkeeping and reporting, and public participation. We request comment on any additional provisions that may be needed to establish a GHG synthetic minor permitting program in 40 CFR 52.21, and on any additional changes to the proposed regulatory text that might be required. In addition, we request comment on a number of specific provisions of the proposed regulatory language relating to the definition and use of an emissions limitation (using the phrase ''which has the effect of limiting'' instead of the terms limit(s) or limitation(s) in proposed provisions 52.21(dd)(2)(i), (5)(ii)(b), and (5)(v)(a)); two options for addressing the determination of application completeness (see different deadlines and processes for finding completeness in proposed provisions 52.21(dd)(4)(ii) and (iii)); and the appropriate procedures, if any, to include for administrative review (see proposed provisions 52.21(dd)(4)(vii) and (7)(iv)). Finally, we would also amend the existing regulations in Part 49 to ensure that we have synthetic minor permitting authority for GHG sources located in Indian country. Amending our existing minor source authority for Indian country to add GHG synthetic minor authority would retain all synthetic minor authorities for Indian country within one rule. We believe this would be easier for sources in Indian country to implement, but we request comment on whether we should instead limit the proposed changes to only 40 CFR 52.21.

C. Redefining Potential To Emit and Source Category Specific PTE

This section discusses our current thinking on developing category specific PTE rules or guidance and requests comment on the appropriate categories and requirements. In addition we are also exploring a novel approach that would provide an individual source, in any of multiple source categories, a way to obtain streamlined, as well as legally and practicably enforceable restrictions, on the source's hours of operation. We outline and request comment on a potential approach for creating such a rule; however, we do not intend to finalize this approach in this rulemaking.

As explained in the Tailoring Rule, because the PSD and title V applicability are based on PTE, rather than on actual emissions, they could sweep enormous numbers of sources into the PSD and title V programs even though those sources' actual emissions are far below the applicability thresholds. For example, sources that operate for only part of the year, but that have no legally and practicably enforceable limitation on their operating hours, must calculate their PTE on the basis of the amount of emissions that would result if those sources did operate, and therefore emit, on a year-round basis (8760 hours per year). Our proposed synthetic minor rule would give sources the option to accept legally and practicably enforceable limits on their operations by, for example, agreeing to limit the hours the sources operate and complying with recordkeeping, monitoring, and reporting requirements to ensure that these limits are enforceable as a practical matter. As we have explained, the issuance of synthetic minor permits to individual sources benefits the GHG phase-in program, but we would like to continue to explore methods that can reduce the number of individual permits a reviewing or permitting

authority need to issue. Therefore, in addition to individual minor source permitting, we continue to explore adopting, or encouraging state permitting authorities to adopt, rules for source categories that we expect include large numbers of sources whose actual GHG emissions are well below applicability thresholds, but which, absent legally and practicably enforceable limitations, have PTE above those thresholds.

As we noted in our proposed Tailoring Rule, the first step necessary to develop a source specific PTE regulation or guidance is to identify source categories that are generally conducive to a streamlined PTE approach. 74 FR 55321. In selecting one or more source categories, one consideration is how to address the possibility that the GHG applicability thresholds could change in the future. Today, we have more information on sources with a potential to emit 100,000 tpy or more CO_2e, and may be better situated to propose a source category specific PTE rule for a one of these source categories, in the nearer term. We have less information about smaller sources, and developing a PTE rule will require significant additional information collection, and technical analysis.

Source category PTE rules or guidance continue to offer the opportunity for reducing administrative and permitting burden related to sources of all sizes. We are broadly soliciting information on source categories with sources at all levels of emissions, ranging from sources with actual emissions below the PSD and title V statutory thresholds to those that are just below the Steps 1 and 2 thresholds or the thresholds under consideration for this rulemaking. Therefore, we request comment on all source categories that would be candidates for creation of a PTE-specific rule or guidance. Candidates include source categories that currently have PTE substantially higher than their actual emissions, so that, if we were to revise the thresholds to fall below their PTE but remain above their actual emissions, a rule or guidance that adjusted how sources in those source categories calculate PTE could allow them to fall below the revised thresholds. For instance, we request comment on the usefulness of a PTE regulation for natural gas fired boilers that use a limited amount of fuel. As another example, we solicit comment on whether this approach might be useful for sources whose only emissions units are metered, natural-gas fired units with actual GHG emissions below the relevant applicability thresholds, which because of their metering are able to track and determine their GHG emissions on a continuous basis. This option would essentially allow sources to determine PTE with reference to their actual emissions based on actual fuel use. Conceptually, this option would likely be available for such metered sources that have historically always had emissions below the applicability thresholds and that will maintain and operate their meters on a going-forward basis. For such sources, actual GHG emissions can be continuously determined by monitoring their fuel use so that they remain below the applicability thresholds, as well as comply with recordkeeping and reporting requirements.

For any source category identified in comments, we specifically solicit information on how the source category should be defined, typical hours of operation over a year and whether those vary by, for example, season, production cycle, or over a day, and information on typical emissions. We specifically request input on what sorts of GHG-emitting source categories may only operate seasonally or otherwise have a limited production time—*e.g.,* limited number of shifts, operate only during day-time hours, operate only in the evenings, or emit emissions only from heating during winter months—or have physical restrictions on their operations that might make them well suited for a PTE rule or guidance. We request comment on the time period that reflects these sources' maximum historical operations, which we could use to establish, whether through guidance or rulemaking, the PTE for sources in those source categories. We also solicit comment on what type of documentation would be necessary to demonstrate that sources in a source category have a history of limited operations. For example, would it suffice for sources to demonstrate a 5 or 10 year history of limited actual hours of operation? Suppose a representative set of sources in a source category has records documenting that they operated only two, 8-hour shifts at their facilities for the past 10 years, and that when workers are not working, emissions units are not running. Alternatively, suppose a representative set of sources in a source category has records that show that they only operate during summer months, and that the longest they have operated in the summer is for 4 months. In such circumstances, could the EPA interpret, through guidance or rulemaking, PTE for sources in that source category to reflect that maximum level of actual operation?

We are also exploring the development of a streamlined method that reduces the permitting burden for sources that have historically operated with reduced hours of operations and are willing to accept an hourly limit at or below the maximum level of historical operation. The purpose of such a rule would be to create a legal mechanism by which sources in at least certain types of source categories could take legally and practicably enforceable limits on hours of operation without having to go through the more burdensome process of obtaining individual synthetic minor permits. Rather, we contemplate that under such an approach, a source would report and document its historical maximum hours of operation to EPA in some way, and accept a legally and practicably enforceable limit to operate at or below that level, along with obligations designed to ensure enforceability, such as recordkeeping, reporting, and monitoring requirements.

In order to develop our thinking on this new approach, we are asking for comment on several specific issues. We request comment on whether such a rule would be helpful to permitting authorities in reducing GHG permit burden. In addition, we request comment on whether hours of operation is an operating parameter that does not need source specific limitations to assure compliance. Have permitting authorities included hours of operation restrictions in numerous synthetic minor permits? What success or difficulties have permitting authorities experienced in enforcing hours of operation restrictions through synthetic minor permits? Have terms and conditions of such permits been uniform within or between source categories?

Additionally, we are requesting input on whether such a rule should target specific source categories, or be made broadly available to all source categories, and on what types of GHG-emitting source categories may only operate seasonally or have a limited production time. We request comment on the appropriate structure and requirements for such a rule. What sorts of application requirements, permit limits, and recordkeeping, monitoring, and reporting have permitting authorities required for such hourly limits? What time period adequately reflects maximum historical operations, for purposes of determining a restriction on future operations?

We also request comment on mechanisms the rule should provide to ensure that the source does not exceed any limitation on hours of operations

that it agrees to accept. Finally, we request comment on whether such a process can be rigorous enough to maintain the necessary integrity in PTE calculations, and made legally and practicably enforceable through reporting, monitoring, and ongoing recordkeeping requirements, but streamlined when compared to the burden of issuing and obtaining an individual synthetic minor permit.

Again, we are just requesting comment in this action on the idea of developing a rule to voluntarily restrict hours of operation across multiple source categories and we are not proposing a specific rule at this time. If, after reviewing comments, we determine that this is a viable approach for streamlining GHG permitting, we may proceed to propose a specific rule in the future.

D. General Permitting for GHGs

1. What is a general permit?

A general permit is a permit that the permitting authority adopts once and then applies identically to each source that requests coverage and meets the specific eligibility requirements. General permits are best suited for the regulation of sources that perform the same or similar operations, emit similar air pollutants and are subject to the same limitations, standards and requirements. General permits are a mechanism that provides for greater efficiency in issuing required permits, thereby saving costs to both the source and the permitting authority.

As noted in the following, some states have programs that authorize general permits. These programs show very clearly that there are benefits to using general permits. The issuance process for the permit is relatively simple and streamlined. The applicable requirements for these sources have already been identified for the applicant in both the application and the permit. The applicant knows, prior to application submittal, what conditions the permit will contain. In addition, public review is simplified. The public review process for general permits occurs before the general permit is finalized, rather than on a permit by permit basis.

In the context of GHG, the issuance of PSD or title V general permits would promote more efficient treatment of GHG-emitting sources that would be subject to permitting, and allow the expeditious expansion to more GHG-emitting sources while protecting those sources and the permitting authorities from undue burden.

2. What is the Legal Authority for General Permits?

The CAA gives the EPA the authority in section 504(d) to issue general permits for title V sources, and the EPA has regulations in place to create general permits for title V sources. Although there is no provision in the CAA that expressly authorizes the use of general permits in the PSD program, the DC Circuit, in the *Alabama Power* case, recognized that ''[c]onsiderations of administrative necessity may be a basis for finding implied authority for an administrative approach not explicitly provided in the statute'' and expressly identified general permits as an alternative to the exemptions that were at issue in that case. *See* 636 F.2d at 360. Further, courts have recognized the EPA's authority to use general permits under section 402 of the Clean Water Act without an express provision authorizing such general permits. *Environmental Defense Center* v. *EPA,* 344 F.3d 832, 853 (9th Cir. 2003) (''General permitting has long been recognized as a lawful means of authorizing discharges.'') (citing *NRDC.* v. *Costle.,* 568 F.2d 1369, 1381 (DC Cir. 1977)); *NRDC.* v. *Train.,* 396 F. Supp. 1393, 1402 (D.D.C. 1975) (The EPA has ''substantial discretion to use administrative devices, such as area permits, to make EPA's burden manageable.'').

3. Have the states used general permits?

Many states have taken advantage of the ability to use general permits. In reviewing state programs, we have found that though the concepts are similar, the structure and content of the various programs is quite diverse. For example, the New Jersey Department of Environmental Protection (NJDEP) has developed a general permit program (GP–017) [51] that allows for the construction, installation, reconstruction, modification and operation of boilers and heaters less than 5 MMBTU/hour. NJDEP defines a general permit as a pre-approved permit and certificate which applies to a specific class of significant sources. By issuing a general permit, NJDEP indicates that it approves the activities authorized by the general permit, provided that the owner or operator of the source registers with the Department and meets the requirements of the general permit. If a source belongs to a class of sources which qualify for a general permit and the owner or operator of the source registers for the general permit, the registration satisfies the requirements of NJAC 7:27–8.3 [52] for a permit and certificate.

Ohio's Division of Air Pollution Control (DAPC) also has developed model general permits-to-intall and model general permits-to-install and operate for select sources in Ohio. The regulations for general permits can be found in OAC Rule 3745–31–29. Ohio states that a general permit is the same as any permit-to-install or permits-to-install and to operate that DAPC issues; the only difference is that all the terms and conditions of the permit have been developed in advance. This is referred to as the ''model general permit.'' Potential applicants can review the model general permit qualifying criteria, terms and conditions, and if they believe they qualify, they can complete the application and sign the qualifying criteria document. The DAPC will review the applicants' information to confirm that they meet the qualifications, and then issue the general permit to the applicants.

4. What steps has the EPA made toward developing general permits?

In the context of streamlining the permitting process for GHGs, the EPA is considering various methods for developing general permits. As a procedural matter, the EPA is evaluating the possibility of proposing an enabling rule to enable the development of PSD general permits for GHG emitting sources. This rule would enable the EPA to create and implement PSD general permits for GHG emissions only for selected source or emissions unit categories. The enabling rule would lay out the basic foundation for general permits. It would identify the general provisions that would be found in all EPA-issued general permits, the criteria and process for establishing a general permit, and discuss the rationale and legal basis for a PSD general permit for GHGs. The enabling rule would also establish the process for the creation of general permits for the EPA's use where the EPA is the GHG permitting authority and define mechanisms by which states could leverage federal general permits to streamline the permitting processes for sources that would trigger PSD for only their emissions of GHGs.

We are also considering the overall criteria for determining the source or

[51] *http://www.state.nj.us/dep/aqpp/downloads/gp17.pdf.*

[52] The permittee shall not construct, reconstruct, install, or modify a significant source or control apparatus serving the significant source without first obtaining a preconstruction permit under N.J.A.C. 7:27–8. [N.J.A.C. 7:27–8.3(a)].

The permittee shall not operate (nor cause to be operated) a significant source or control apparatus serving the significant source without a valid operating certificate. [N.J.A.C. 7:27–8.3(b)].

emissions unit categories for which we may develop the first general permits. Our initial inclination, on which we solicit comment, is that we should focus first on GHG-only sources, that is, GHG-emitting sources that do not emit non-GHGs in amounts that would be subject to PSD requirements. This is because complying with PSD for non-GHG pollutants involves analyses and demonstrations, such as a requirement that the source demonstrate that the proposed project will not cause or contribute to a violation of any NAAQS, which inherently are facility and location specific. For GHGs, BACT is the primary substantive PSD permitting requirement, and we believe that BACT can more readily be established for a source or emissions unit category, thus making the general permit approach feasible for sources and modifications that are major only due to GHG emissions.

We are considering what source and/or emissions unit categories would be good candidates for the first general permits. Even though natural gas-fired boilers range from large high performance boilers for industrial applications to small commercial and residential units for space heating and hot water, sources for which the only or predominant source of GHG emissions are boilers may be good candidates for PSD GHG general permits. Because boilers are widely used throughout industrial and commercial source categories, and can readily be categorized by design, purpose, efficiency and emissions, they present opportunities for significant streamlining through the use of general permits and thereby reductions in administrative burden from PSD permitting. Because the controls for GHGs on natural gas-fired boilers are sufficiently uniform, it seems possible to identify standardized control requirements to include in a general permit without significantly compromising environmental protection.

Even so, it is unclear whether a general permit rule, for boilers or other emissions units, would be a productive streamlining method for the source categories and projects affected by this Step 3 rulemaking. In many cases, boilers or other equipment located at a source or involved in a project will emit non-GHG pollutants in amounts great enough to trigger other significant CAA requirements such as minor NSR, NESHAP and/or NSPS, diminishing the streamlining utility of a PSD general permit for GHG only. We are also mindful that implementation of a general permit program would likely involve regulatory action and a SIP revision at the state or local permitting authority level, which in and of itself imposes administrative costs, and the limited benefits of a general permit program for the source categories and projects potentially covered in this Step 3 rulemaking could be offset by the administrative costs of the SIP revision process. Although we are concerned that GHG general permits for boilers and other common emissions unit categories may not provide enough streamlining value for the source categories affected by this Step 3 rulemaking, we believe such permits may have significant value when we consider smaller sources, especially those with no other emissions units or non-GHG pollutants emitted at significant levels. We are also considering how to incorporate a general permit for GHGs into existing state permitting programs. We are mindful that reviewing agencies generally have construction permitting processes that address all applicable requirements, including minor NSR and major NSR/PSD in an integrated fashion. It would be important to structure the general permit program so as to avoid complicating or conflicting with established permitting processes.

We are also considering further questions, including: (1) Should general permits be available to greenfield sources?; (2) When issuing a general permit for a project/modification what do we do with pollutants other than GHGs?; (3) Can general permits be utilized for projects at any major source or only at sources major only for GHGs?; (4) Are general permits available to both new and modified units?'' (5) ''Are general permits mandatory or optional for states?; (6) What is the process for establishing general permits?; (7) Should states or the public be able to request that the EPA propose general permits for source categories and emissions units, and if so, what is the process for this type of request?; (8) What should the public participation procedures be?; (9) What is the approval or denial process for sources to use a general permit?; (10) What would BACT for a general permit look like?; (11) How would BACT be established?; (12) How would BACT be updated?; (13) What are the Endangered Species Act and environmental justice implications of the general permit?; (14) Should there be a periodic review of the general permit's provisions, and if so, what would it look like?, and (15) Could we develop a process for states to incorporate a general permit program into their SIPs in a way that minimizes the administrative costs of the SIP revision process?

We commit to continue to explore the possibility of general permits by reviewing information that we expect to receive in response to this proposal and the information gathered by permitting authorities through the implementation of GHG permitting. We believe that establishing general permits will require collection of significant category-specific data for various source and emission unit types as well as those that have heretofore generally not been regulated by the CAA (*e.g.,* small furnaces, water heaters, etc.), which could take a significant amount of resources and time.

We request comment on, in addition to the issues described previously, possible sources and source categories that may benefit from general permits, if such permits were only created for addressing GHG emissions, as a streamlining method to assist in the phase-in of GHG permitting. We request comment on the appropriate approach for public review, in particular whether public review of individual uses of a PSD general permit can be satisfied through public participation in the development of the general permit itself or whether each individual use of the PSD general permit requires public participation. We also request comment on whether such a program should be a required minimum element for SIP approved PSD programs, as relevant.

5. General Permits and Title V

We expect many of the issues related to PSD general permits would also be relevant for title V general permits. For example, we would expect title V general permits to be most useful for GHG sources that trigger title V applicability due to boilers, but where sources are subject to other requirements, such as NSR, NESHAP and/or NSPS, the utility of general permits may be limited.

We request comment on experience with title V general permits issued by state and local permitting authorities, including whether permitting authorities have altered application requirements pursuant to 40 CFR 70.6(d)(2), and other means of ensuring that general permits met the goals of title V for streamlined procedures and assuring compliance. Finally, we request comment on whether such a program should be a required minimum element for state Part 70 title V programs, as relevant.

E. Presumptive BACT for GHGs

1. Definition of BACT

The Act defines BACT as:

* * * an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of ''best available control technology'' result in emissions of any pollutant which will exceed the emissions allowed by any applicable standard established pursuant to section 111 or 112 or this Act. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under this paragraph as it existed prior to enactment of the Clean Air Act Amendments of 1990.

CAA section 169(3).

Performing case-by-case BACT determinations can be complicated, resource-intensive and time-consuming. In brief, the top-down BACT process calls for all available control technologies for a given pollutant to be identified and ranked in descending order of control effectiveness. The highest-ranked (''top'') option(s) should be established as BACT unless the permit applicant demonstrates to the satisfaction of the permitting authority that technical considerations, or energy, environmental, or economic impacts justify a conclusion that the top-ranked technology is not ''achievable'' in that case. If the most effective control strategy is eliminated in this fashion, then the next most effective alternative should be evaluated, and so on, until an option is selected as BACT. This analysis should be conducted for each regulated NSR pollutant that is subject to the BACT requirement in a given case. The EPA has broken down this analytical process into the following five steps.

Step 1: Identify all available control technologies.

Step 2: Eliminate technically infeasible options.

Step 3: Rank remaining control technologies.

Step 4: Evaluate most effective controls and document results.

Step 5: Select BACT.

2. What is presumptive BACT?

Presumptive BACT is a potential streamlining approach that involves the development of a standardized BACT for certain emissions units. Presumptive BACT would create ways for specific categories of permitted emissions units to move from a system under which determinations are made on individual permits on a case-by-case basis, to one where BACT is determined for common types of equipment, which could be applied to individual permits with little to no additional revision or analysis. In general, the EPA believes that presumptive BACT could be implemented on a broad basis for specific emissions units where there are well defined and similar types of emissions units, uniformity in process/emissions unit design and function, and well defined GHG control technologies. Reviewing agencies could adopt presumptive BACT, possibly including model permit language and monitoring, reporting and recordkeeping requirements, to streamline the BACT analysis for GHGs within their own established permitting process.

The EPA has previously introduced the concept of presumptive BACT to streamline permitting for desulfurization projects at refineries as well as in other instances,[53] and some state permitting authorities have adopted similar approaches.[54] Based on our understanding of the types of sources that will become subject to PSD if GHG emissions are regulated at levels below the thresholds currently contained in the Tailoring Rule, we believe the presumptive BACT process could offer significant streamlining benefits. Such streamlining benefits would arise because many of the sources that would become subject to BACT at lower GHG emission levels will likely have very similar emissions producing equipment, and we believe there would be little variation across sources with respect to the cost, energy and environmental considerations in the BACT decision.

As discussed in the following, the EPA has expressed interest in soliciting comments on the potential use of presumptive BACT for GHG permitting. It should be understood that presumptive BACT would be only an optional means to streamline the top-down BACT process by pre-evaluating what could constitute BACT for specific categories of similarly-situated emissions units. It should also be understood that this would only be available to address the GHG emissions from those units, and that the pre-construction permitting process would not be affected in any other way.

Presumptive BACT would add another option for sources to achieve BACT requirements and provides additional benefits for the source and the permitting authority through streamlining of the permit process. In actual implementation, the choice of a presumptive BACT option would reduce burdens currently associated with conducting individualized, top-down BACT analyses for each source requiring a PSD permit. Nonetheless, there are several considerations to explore before we can implement a presumptive BACT approach including the role of presumptive BACT in a case-by-case decision framework, the role and timing of public review, and preserving BACT's technology-forcing role within a presumptive BACT framework.

3. How the EPA Could Consider Implementing Presumptive BACT

As noted previously, the CAA requirement for BACT, found in section 165(a)(4), mandates that BACT determinations be made for each regulated pollutant on a ''case-by-case basis.'' Accordingly, the EPA would like to develop a process that benefits from the efficiencies that presumptive BACT would provide while allowing for issuance of individual PSD permits. In the proposed Tailoring Rule, the EPA discussed potential options to explore presumptive BACT as an alternative to the current case-by-case nature of conventional BACT. In that discussion and in subsequent consideration by the agency, two potential ways in which to implement a presumptive BACT program have emerged: As an alternative method of completing a BACT analysis in an individual permitting action or as a way to eliminate the need for an individualized BACT analysis for all permits in a particular category.

The first approach would develop, through notice-and-comment rulemaking or through permitting guidance, a presumptive BACT level for sources in a particular source category that subsequently could be applied and assessed in individual permitting actions. Under such an approach, while the top-down analysis for an individual

[53] *See* Memorandum, ''BACT and LAER for Emissions of Nitrogen Oxides and Volatile Organic Compounds at Tier 2/Gasoline Sulfur Refinery Projects,'' from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors (January 19, 2001).

[54] For example, Wyoming has a minor source permitting program that includes a BACT analysis, and they use a presumptive BACT process for issuing minor source permits to a particular source category—oil and gas production facilities. *See* Permitting Guidance for Oil and Gas Production Facilities, Wyoming Dept. of Environmental Quality, Air Quality Division (August 2007 revision).

permit would be fulfilled by a request to include the presumptive BACT limit, there would still be an opportunity for permitting authorities and the public to examine individual permits to assess whether there are significant case-specific energy, economic, and/or environmental impacts that would require adjustment of the presumed limit for that particular source. This form of presumptive BACT would create a rebuttable presumption that the emissions covered by the particular source's BACT limit will, in fact, be controlled to the maximum degree that can be achieved. This presumption shifts the burden to the permitting authority or other interested parties to produce credible evidence that the application of presumptive BACT to that particular source would not comply with BACT requirements. If credible evidence were produced, then the source would either be required to produce evidence sufficient to show that the presumption is the best achievable control technology or to conduct an individualized top-down BACT analysis. Whatever mechanism the EPA may ultimately choose to implement presumptive BACT, if any, the critical and essential component of a successful BACT analysis will continue to be a strong record supporting the decisions reached by the permitting authority, as explained in the PSD and Title V Permitting Guidance for Greenhouse Gases (March 2011).

While such an approach could streamline the BACT determination process to some extent, we are concerned that those streamlining benefits could be negated given the prospect that such presumptive BACT determinations would, as a result of permitting authority review and public comment, still have to be reviewed for numerous individual sources. Accordingly, the EPA has also considered a system in which presumptive BACT levels for a specific category of emissions units would be developed through notice-and-comment rulemaking but then applied to individual sources in that category without requiring permitting authorities to individualize the BACT determination or allowing for public comment on whether presumptive BACT levels should apply to an individual source. While, as noted in the following, some have argued that such an approach would not strictly adhere to the individual case-by-case BACT determinations envisioned in the CAA, even if that is the case, maintaining case-specific BACT determinations may well be impractical given the significant increase in new sources that would likely be brought into the PSD program when GHG permitting thresholds are reduced. Moreover, the DC Circuit, in the *Alabama Power* case previously discussed, stated that courts ''frequently uphold streamlined agency [regulatory] approaches or procedures where the conventional course, typically case-by-case determinations, would, as a practical matter, prevent the agency from carrying out the mission assigned to it by Congress.'' 636 F.2d at 358. The Court recognized that such non-individualized streamlining measures may be needed when time or personnel constraints or other practical considerations ''would make it impossible for the agency to carry out its mandate.'' *See id.* at 359. A presumptive BACT approach that does not require individualized, source-specific determinations could well be an important tool to allow the EPA, state and local permitting authorities to carry out the PSD program in as timely and efficient manner as necessary to promote (rather than hinder) control of GHG emissions from the many new, small source categories that would be required to have PSD permits based on their GHG emissions. This approach would preserve opportunities for public participation by taking comment during the determination of presumptive BACT levels for a source category. Although here too, some have argued that this type of presumptive BACT approach, one that does not require individualized, source-specific determinations, would depart from a literal application of the statutory requirements for BACT, even if that is the case, it may nevertheless remain closer to the congressional intent for the PSD program in so far as it would reduce administrative burdens in each permitting action, thus allowing more overall sources to become subject to a PSD permitting program that moves applicability thresholds closer to the statutory levels.

We received many comments on presumptive BACT during the public comment period for the Tailoring Rule. Many commenters supported the concept of presumptive BACT as a means to streamline PSD permitting. Some noted that it would promote consistency in BACT determinations as various permitting authorities gain experience with GHG permitting. Some suggested that it would be useful for common combustion sources, and at least one indicated that it would be particularly justified for natural gas-fired equipment. Several included recommendations for specific industrial sectors. A number of the supportive commenters also recommended that the source have the option to use presumptive BACT or to conduct a case-by-case BACT determination.

Some commenters opposed presumptive BACT. A few indicated that it would not be flexible enough to take into account source-specific factors. Others asserted that it is contrary to the requirements of the Act for a case-by-case BACT determination and opportunity for public review. Some noted that it would dampen the technology-forcing role of BACT, and at least one suggested a periodic update not less than every 5 years.

The EPA requests comment on the possible approaches to presumptive BACT discussed previously. We request comment on whether the first approach, where each use of presumptive BACT would be subject to permitting authority review and public comment, would offer significant streamlining value. We also request comment on our legal authority to implement each approach, particularly on the applicability of *Alabama Power* principles to the second approach, which does not authorize individualized, source-specific determinations.

4. Possible Impediments to Presumptive BACT

a. Public Comment Processes for Presumptive BACT

The provision of effective and meaningful opportunities for public comment on BACT determinations is an important element of air permitting process provided for in the CAA. In the context of the two presumptive BACT approaches explained previously, the EPA or a state agency could provide opportunity for public participation either in individual permitting actions to allow the public to rebut the presumption that a pre-determined BACT limit applies to the specific source under consideration, or in determining the presumptive BACT levels for a source category. The EPA requests comment on the public participation approaches that would be appropriate to support presumptive BACT determinations. For example, is it sufficient to provide for public review and comment only during the rulemaking to establish a presumptive BACT level or does the case-by-case nature of BACT require comment for individual permitting actions? Even if we follow the approach of establishing a presumptive BACT limit through notice-and-comment rulemaking and limiting public input on individual

permitting actions, are there circumstances in which public comment might also be warranted for those individual permitting actions the presumptive BACT limit? If so, what are they? If we follow the approach of allowing public input on individual permitting actions that use presumptive BACT, are there ways in which the public comment might be limited to recognize more streamlining benefits?

b. General Permits

The EPA is particularly interested to consider pursuing presumptive BACT as a streamlining approach in cases where there would be similar BACT outcomes in multiple permits due to similar source characteristics and available control options. General permits, which are discussed in the previous section, provide one context to implement this. General permits are particularly useful in situations where source operations are highly consistent and relatively simple across a source category. General permits typically work best where sources in the category are subject to the same applicable air regulatory requirements, including those associated with criteria pollutant and air toxics regulatory programs.

We are particularly interested to consider opportunities to develop presumptive BACT options to complement potential general permitting approaches addressing GHGs. In the absence of a presumptive BACT approach, general permits addressing GHGs may have limited streamlining value in light of case-by-case conventional BACT determination needs. Accordingly, we request comment on opportunities for using presumptive BACT approaches in the context of general permits. In addition, we request comment on potential source categories or types of emission units that may be particularly well-suited for a general permit and presumptive BACT approach due to similarities in source characteristics and available GHG control options. We also request comment on whether presumptive BACT approaches for GHGs should be considered for source categories and types of emission units that may not be feasible to address using a general permit approach.

c. Updating of Presumptive BACT

In general, case-by-case BACT determinations allow for the continual evolution of BACT requirements over time and are generally referred to as ''technology forcing,'' in so much as available controls identified in prior permits are considered in each subsequent BACT determination and the specific facts of subsequent actions may support application of a top-ranked control technology that was eliminated in prior actions. However, the EPA recognizes that application of presumptive BACT to a category of sources over many permitting decisions may diminish the technology forcing effects of PSD. Updating of BACT is an important concept to consider in the context of developing a presumptive BACT option, and the EPA is interested in options that would help maintain advances in control technologies.

As previously explained, the conventional top-down BACT process incorporates continual updating of the BACT for each type of emission unit through the analysis that occurs to ensure that the most current BACT is used. To provide streamlining opportunities, the presumptive BACT process would likely need to incorporate some form of updating mechanism to ensure that the BACT remains current over time. We have identified several different approaches by which such updating could be accomplished. One approach would be for the EPA or a state agency to periodically review and consider updates to the presumptive BACT option established for a certain source category or type of emission unit. For example, there could be a requirement to update presumptive BACT on a set time interval (such as every 3 or 5 years).

Another approach could be to link a presumptive BACT determination to a standard established through some respected standard-setting programs so that the presumptive BACT level would automatically update periodically in conjunction with updating process already used in established standard-setting programs, as discussed in the following examples. One option would be for the EPA or a state agency to set presumptive BACT at the same levels used in equipment energy efficiency standards established by government agencies or other respected standard-setting bodies. For example, the U.S. Department of Energy (DOE), pursuant to the Energy Policy and Conservation Act, promulgates energy efficiency standards for industrial and commercial boilers.[55] These periodically-updated equipment energy efficiency standards could be used as the basis for presumptive BACT in cases where such standards exist. Similarly, it may be appropriate to use ENERGY STAR equipment certification as a basis for presumptive BACT. Whereas appliance and equipment energy efficiency standards usually provide the ''ground floor'' requirements for performance of new energy consuming equipment, ENERGY STAR certification specifications establish minimum performance requirements for high-efficiency, lower emissions equipment within selected product categories. The ENERGY STAR program, administered by the EPA in partnership with the DOE, establishes voluntary product and equipment energy efficiency specifications for certain products and equipment in an effort to transform the market for manufactured goods by expanding the availability and visibility of energy-efficient products. Commercial and residential products can earn the ENERGY STAR label by meeting the energy efficiency requirements set forth in ENERGY STAR product specifications.

Accordingly, ENERGY STAR equipment specifications include energy efficiency performance requirements that exceed DOE appliance and equipment standards. For example, to qualify for ENERGY STAR certification, residential boilers must have annual fuel utilization efficiency (AFUE) ratings of 85 percent or greater.[56] This compares with DOE boiler energy efficiency standards established in 2007 that range from 80 to 83 percent.[57]

The EPA requests comment on approaches for ensuring that presumptive BACT options are periodically reviewed and refreshed. We also request comments on the feasibility and potential configuration of approaches that connect presumptive BACT to equipment energy efficiency standards or certifications or other external factors. In particular, it would be helpful to receive comments on the role DOE industrial equipment and appliance energy efficiency standards and/or ENERGY STAR certification for industrial and commercial equipment play in the context of presumptive BACT. In addition to the specific comments requested previously, the EPA seeks overall comments on the use of presumptive BACT, including suggestions for how such limits could be established, updated and used consistently within the requirements of the CAA, including requirements for a top-down, case-by-case BACT determination process. The EPA invites comments on whether presumptive

[55] *http://www1.eere.energy.gov/buildings/appliance_standards/residential/furnaces_boilers.html.*

[56] *http://www.energystar.gov/index.cfm?fuseaction=find_a_product.showProductGroup&pgw_code=BO.*

[57] *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/furnaces_boilers/furnaces_fr_111907.pdf.*

BACT options should be advanced through rulemaking or through guidance. Comments would also be useful regarding considerations that should affect whether presumptive BACT approaches could be used to address only existing units or new units. The EPA also encourages comments on the respective roles of state, local and tribal air agencies relative to that of the EPA in establishing presumptive BACT options.

F. Title V Empty Permits

In the Tailoring Rule, we identified a possible exclusion for ''empty permits'' (which are, as noted, permits issued to a source that is not subject to any applicable requirement for any pollutant) as a potential means for alleviating the potential burden of title V permitting for GHG sources. In the Tailoring Rule we described an ''empty permit'' as ''a permit issued to a source that is not subject to any applicable requirement for any pollutant.'' [58] Empty permits may occur because the applicability for title V is in part based on major source status, yet there may not be any applicable requirements that apply. Since the principal purpose of title V is to collect the requirements applicable to the source and assure compliance with those requirements it is unclear whether Congress intended sources, particularly smaller sources, to be subject to title V permitting if there are no applicable requirements for the source. The EPA solicits comments on whether we may, and should, interpret title V as not requiring permits for sources that are not subject to any applicable requirements (as defined in 40 CFR 70.2). The EPA also solicits comments on whether the EPA could adopt such an interpretation through guidance, an interpretative rule (without notice and comment), or only through notice and comment rulemaking, and whether states would, or should, be required to submit program revisions to the EPA for approval in order to exclude such sources from title V permitting.

In the Tailoring Rule, the EPA noted that we anticipated very few if any ''empty permits'' as a result of Step 2. However, there remains significant uncertainty as to the number of ''empty permits'' that would exist if the Tailoring Rule thresholds were significantly lowered. The EPA believes that several SIPs contain generally applicable requirements for sources that would constitute ''applicable requirements'' for many sources that would become subject to title V solely as a result of GHG emissions if the thresholds were significantly lowered. We noted in the final Tailoring Rule that:

> We need to gather more information concerning the potential number and utility of ''empty permits'' for GHG sources, in light of the fact that the need for requirements in title V permits will vary based on the requirements of each SIP, and the fact that some SIPs contain broadly applicable requirements.

Tailoring Rule, 75 FR 31566. Thus, we solicit comments, particularly from states on these issues. For example:

What, if any, SIP requirements would be applicable to sources that would become subject to title V permitting solely as a result of emitting GHG in excess of a lower threshold?

What number (or proportion) of sources potentially subject to title V would be expected to have no applicable requirements under the SIP or other CAA programs?

Is there a threshold below which the number of empty permits would increase significantly, as a result of a corresponding threshold in applicability of SIP requirements?

VII. Request for Comment

We have requested comment throughout this preamble on many aspects of the GHG permitting program and our proposed rulemaking. In this section, we provide a summary of the issues on which we are requesting comment and refer the reader to the preceding sections for our requests on more specific points.

A. Solicitation of Comment on Proposed Step 3

1. General

We solicit comment on all issues described previously in section V of this preamble. In particular we solicit comment from the states as to their current and expected air permit budgets as well as their current and expected future levels of permitting.

In addition, we solicit comment on promulgating lower GHGs thresholds for PSD applicability and on promulgating lower GHGs thresholds at any levels we have analyzed in this rulemaking for PSD and title V applicability. Commenters advocating lower thresholds should support their position with data demonstrating that the permitting authorities have developed the capacity to handle the current and future permitting volume under the existing thresholds, and will be able to handle the additional permitting volume, in a timely manner, that would be required at reduced thresholds. Commenters should also be able to support their positions with data demonstrating that sources have the ability to meet the requirements of the PSD program.

We note that in this rulemaking, we are not re-opening or soliciting comment on the Tailoring Rule's decision to phase in the thresholds, to begin with the Steps 1 and 2 levels, or the legal or policy basis for the Tailoring Rule. By the same token, as noted previously in section V, in this rulemaking, we are relying on the same methodology used in the Tailoring Rule to calculate administrative burdens, and we are not re-opening that methodology or soliciting comment on it.[59] We are simply proposing action and soliciting comment on Step 3 of the phase-in approach.

2. Call for Additional Information Concerning State Burdens

As stated in the Tailoring Rule, the EPA is committed to tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD and title V programs of the CAA. The following questions are structured to help the EPA best assess the status of GHG permitting programs based on the three criteria outlined in the Tailoring Rule, which forms the basis for this action. We request states submit responses to the following questions to the appropriate EPA Regional Administrator within 45 days after the date of publication of this proposal in the **Federal Register**.

General Permitting Burden/Resources

1. Does your state currently have the necessary resources (funding and staff) to run the PSD and title V permitting program as they exist today?

a. If your state is strained for resources please describe the reasons for it? Please list all that apply and provide a short description of the problem providing specific information where possible (i.e., budget cuts of 10 percent during the last year; hiring freeze; loss 3 FTE in last two years).

i. GHG Permitting

ii. Other Permitting Issues (SO_2, NO_2, etc)

iii. Budget cuts

iv. Lack of personnel

v. Other (please specify)

2. If permitting activity were to increase to levels closer to those

[58] Empty permits are different from ''hollow permits.'' A ''hollow permit'' is a permit for a GHG major source that does not contain requirements for GHG emissions, but which contains other applicable requirements for pollutants for which the source is not major.

[59] Although the Tailoring Rule has been challenged in the U.S. Court of Appeals for the DC Circuit, no party has challenged this methodology.

originally anticipated in the Tailoring Rule,[60] would your state have the necessary resources to manage the increased workload?

a. If not, please estimate the level of additional resources (funding and staff) your state would require to handle the increased burden.

3. In providing perspective on the PSD program, consider the following scenarios where your annual number of PSD permitting activity were to increase by 10, 20, 30, 50, 100, and 200 permit actions per year (both new permit applications and modifications included) due to the potential lowering of the current GHG applicability thresholds. When assessing the resources to permit these sources, consider that many of the newly permitted GHG sources under this scenario would likely consist of commercial and small industrial sources whose primary GHG emissions units are small, similarly configured combustion units:

a. How many more full-time employees (FTEs) would your program need to address each of these potential permitting activity increases (i.e., 10, 20, 30, 50, 100, and 200 permit actions per year) in PSD due to GHGs and still meet current PSD permit processing times?

b. How many additional dollars annually to your staffing budget would these additional FTEs equate to?

4. How has GHG permitting affected the permitting process in your state? Please consider the areas listed below and provide specific estimates of the impact GHG permitting has had on your program where possible (i.e., responded to 10 percent more permitting questions than usual).

a. Number of source meetings.

b. Number of daily permitting questions.

c. Number of incomplete permit applications.

d. Training for permitting staff to understand the GHG permitting process.

e. Is your staff unsure of how and when to permit GHG sources?

5. For states where PSD permits for GHG have been issued, how was the burden (monetary and man-hours) compared to a typical non-GHG permit? Please provide an estimate where possible (i.e., an additional 20 hours).

6. In providing perspective on the title V program, consider the following scenarios where your annual number of title V permitting activity were to increase by 10, 20, 30, 50, 100, and 200 permit actions per year (both new permit applications and modifications included) due to the potential lowering of the current GHG applicability thresholds. When assessing the resources to permit these sources, consider that many of the newly permitted GHG sources under this scenario would likely consist of commercial and small industrial sources whose primary GHG emissions units are small, similarly configured combustion units:

a. How many more full-time employees (FTEs) would your program need to address each of these potential permitting activity increases (i.e., 10, 20, 30, 50, 100, and 200 permit actions per year) in title V due to GHGs and still meet current title V permit processing times?

b. How many additional dollars annually to your staffing budget would these additional FTEs equate to?

7. Does your state have an active outreach initiative and the resources necessary to reach out to smaller sources that may not be aware of their obligation to apply for title V or PSD permits due to GHGs?

a. If the GHG permitting thresholds were lowered resulting in additional sources being subject to the PSD and title V permitting programs, how would this affect such initiative? Please be specific about the level of resources necessary where possible.

8. Have the GHG requirements created or added to a backlog of unissued permits?

a. If so, by what amount?

9. Has your state modified its title V fees to cover GHG permitting needs? If not, would your state need to do so if additional sources (i.e., 10, 20, 30, 50, 100, and 200 actions per year) were added to the permitting programs as a result of lowered thresholds?

Streamlining Specific Questions

1. Is your state processing applications through any electronic permitting measures? If not do you plan on implementing an type of electronic permitting?

2. Has your state implemented LEAN techniques to streamline the permitting process? If so, how has this improved the efficiency for permitting actions? If not, do you plan on doing this in the future?

3. Is your state considering any other permitting streamlining technique to help improve the efficiency and reduce the burden associated with permitting of GHG sources? Please list all streamlining techniques under consideration and the expected implementation timelines.

B. Solicitation of Comment on Streamlining Techniques

In section VI of this preamble, we discuss a range of streamlining techniques for GHG permitting. In this action we propose rulemaking to implement two of these techniques at this time concerning PALs for GHGs and creation of federal synthetic minor source permits for GHGs. For the other techniques, we present information on the techniques but propose no rulemaking at this time. We request comment on all these potential streamlining techniques, as discussed in section VII and in the following sections. More broadly, we request comment on other approaches to streamlining that may hold promise to reduce PSD and/or title V permitting burden for sources of GHGs and permitting authorities. Please include as much detail as possible on how such an approach would work, the amount of burden reduction that could be achieved, the specific legal authority the EPA should rely upon for implementing the approach, and whether EPA rulemaking would be required for implementation.

1. Plantwide Applicability Limitations for GHGs

We request comment on our proposal to undertake rulemaking at this time to provide a more flexible approach for GHG PALs. We further request comment on which option we should pursue for this rulemaking, the Major Source Opt-in Approach or the Minor Source Approach, and on how, specifically, we should revise our rules to implement the preferred approach. In our discussion of, and rationale for, GHG PALs in section VI.A of this preamble, we requested comment on many specific, related issues. We again request comment on those issues here.

2. Synthetic Minor Source Permitting Authority for GHGs

We request comment on our proposal to create synthetic minor permit authority, within the existing federal PSD regulations, for the purpose of issuing synthetic minor permit limitations for GHGs. In addition, we request comment on our legal authority for implementing such a program. Finally, we again request comment on other specific, related issues on which we requested comment in the discussion of synthetic minor permit authority in section VI.B of this preamble.

[60] *See* 75 FR 31540.

3. Redefining PTE and Source Category Specific PTE

We request comment on the discussion in this proposal of our current thinking on developing category specific PTE rules or guidance, and on categories for which such a rule or guidance would be appropriate. We also request comment on creating a rule that would allow a source to use historical hours of operation in determining an emissions unit's PTE. In addition, we request comment on the other specific, related issues that we discussed and on which we requested comment in the discussion of approaches to PTE in section VI.C of this preamble.

4. General Permits for GHGs

We request comment on the idea of developing a rule that would allow use of general permits for GHG sources, and on possible sources and source categories that may benefit from general permits. We also request information on the experience of state and local permitting authorities with the use of general permits and their potential applicability to GHG sources. In addition, we request comment on the other specific, related issues that we discussed and on which we requested comment in the discussion of general permits in section VI.D of this preamble.

5. Presumptive BACT for GHGs

We request comment on the concept of developing presumptive BACT for sources of GHGs, and on possible source categories and emissions units that may be promising candidates for this approach. We request comment on how and when to update presumptive BACT determinations, on the use of presumptive BACT for general permits, and on the appropriate public participation for the development and application of presumptive BACT. In addition, we request comment on the other specific, related issues that we discussed and on which we requested comment in the discussion of presumptive BACT in section VI.E of this preamble.

6. Title V Empty Permits

We request comment on the extent to which SIPs contain requirements that would be applicable to sources that would be subject to title V solely as a result of emissions of GHGs below the current thresholds established by the Tailoring Rule, and whether a significant number of sources would have empty permits at different thresholds. We also solicit comment on whether the EPA can, and should, interpret the title V as not requiring ''empty permits,'' and if so whether state program revisions, approved by the EPA, would, or should, be necessary to exclude such sources from title V permit requirements. In addition, we request comment on the other specific, related issues that we discussed and on which we requested comment in the discussion of empty permits in section VI.F of this preamble.

VIII. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal or policy issues. Accordingly, the EPA submitted this action to the OMB for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

This proposed Step 3 of the Tailoring Rule would continue the phased-in approach begun in Steps 1 and 2. However, we have determined that it would not be appropriate at this time to expand the universe of large sources of GHG emissions that must comply with permitting requirements under the Act, and the proposed rule would not reduce the GHG applicability thresholds or bring more sources into the PSD or title V programs. Thus, the proposed rule would not impose any costs on sources of GHGs to obtain permits or on permitting authorities to issue permits.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The proposed rule would not change the existing GHG permitting thresholds, and therefore would not impose any additional burden on sources to obtain PSD or title V permits or on permitting authorities to issue such permits. The proposed provisions for GHG PALs and synthetic minor source permitting authority would have the effect of reducing permitting burden in that the burden associated with obtaining or issuing a PAL permit or synthetic minor permit would be more than offset through avoiding subsequent PSD permitting actions with greater associated burden. However, if in the context of the final rule we determine that the provisions for PALs and synthetic minors impose new information collection burden, we will adjust the information collection requirements accordingly. The OMB has previously approved the information collection requirements contained in the existing regulations for the NSR and title V programs under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0003 to the NSR program and OMB control numbers 2060–0243 and 2060–0336 to the title V program (40 CFR Part 70 and Part 71 components, respectively). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

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 Procedures 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 proposed action 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 action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect, on all of the small entities subject to the rule.

The proposed rule would not change the existing GHG permitting thresholds, and therefore would not impose any additional burden on any sources (including small entities) to obtain PSD or title V permits or on any permitting authorities (including small entities, if any) to issue such permits. The proposed provisions for GHG PALs and synthetic minor source permitting authority would have the effect of reducing permitting burden on all entities, including small entities, in that the burden associated with obtaining or issuing a PAL permit or synthetic minor permit would be more than offset through avoiding subsequent PSD permitting actions with greater associated burden. We have therefore concluded that this proposed rule will be neutral or relieve the regulatory burden for all affected small entities. 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. In addition while we propose to maintain the current thresholds in this rulemaking, we also solicit comment on lowering the thresholds. If we receive information that persuades us that we should take action to lower the thresholds, we will at that time reassess the applicability of the requirements of the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

This rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any 1 year. The proposed rule would not change the existing GHG permitting thresholds, and therefore would not impose any additional burden on sources to obtain PSD or title V permits or on permitting authorities to issue such permits. The proposed provisions for GHG PALs and synthetic minor source permitting authority would have the effect of reducing permitting burden in that the burden associated with obtaining or issuing a PAL permit or synthetic minor permit would be more than offset through avoiding subsequent PSD permitting actions with greater associated burden. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule 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. As noted previously, the effect of the proposed rule would be neutral or relieve regulatory burden.

E. Executive Order 13132: Federalism

This proposed rule 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 proposed rule would maintain the existing structure of the PSD and title V programs and would not, therefore, affect the relationship between the national government and the states or the distribution of power and responsibilities among the various levels of government. In addition, the proposed rule would not change the existing GHG permitting thresholds, and therefore would not impose any additional burden on state permitting authorities to issue PSD or title V permits or such permits. The proposed provisions for GHG PALs and synthetic minor source permitting authority would have the effect of reducing permitting burden in that the burden associated with issuing a PAL permit or synthetic minor permit would be more than offset through avoiding subsequent PSD permitting actions with greater associated burden.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and state and local governments, the 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. There are no tribal authorities currently issuing major NSR permits, one tribe is implementing a title V program based on a delegation agreement under 40 CFR Part 71 and one tribe has recently obtained approval of title V program under 40 CFR Part 70. However, the proposed rule would not change the existing GHG permitting thresholds, and therefore would not impose any additional burden on sources to obtain PSD or title V permits or on permitting authorities to issue such permits. The proposed provisions for GHG PALs and synthetic minor source permitting authority would have the effect of reducing permitting burden in that the burden associated with obtaining or issuing a PAL permit or synthetic minor permit would be more than offset through avoiding subsequent PSD permitting actions with greater associated burden.

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

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

The EPA interprets Executive Order 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 Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions 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. Further, we have concluded that this rule is not likely to have any adverse energy effects because this action would not create any new requirements for sources in the energy supply, distribution or use sectors.

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 the 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. The NTTAA directs the EPA to provide Congress, through the OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

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

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

Executive Order 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 United States.

The 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. The proposed rule would not change the existing GHG permitting thresholds, and therefore would not affect the universe of sources subject to permitting.

K. Determination Under Section 307(d)

Pursuant to sections 307(d)(1)(J) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(J) specifies that the provisions of section 307(d) apply to ''promulgation or revision of regulations under [part] C of title I (pertaining to prevention of significant deterioration of air quality and protection of visibility).'' This section clearly subjects the portions of this action that pertain to PSD to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.'' Pursuant to this section, the Administrator determines that the portions of this action that pertain to title V are subject to the provisions of section 307(d). This determination allows for uniform treatment for all aspects of this action.

IX. Statutory Authority

The statutory authority for this action is provided by sections 101, 111, 114, 116 and 301 of the CAA as amended (42 U.S.C. 7401, 7411, 7414, 7416 and 7601).

List of Subjects

40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Greenhouse gases, Hydrofluorocarbons, Intergovernmental relations, Methane, Nitrous oxide, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride.

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Greenhouse gases, Hydrofluorocarbons, Intergovernmental relations, Methane, Nitrous oxide, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride.

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Greenhouse gases, Hydrofluorocarbons, Intergovernmental relations, Methane, Nitrous oxide, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Greenhouse gases, Hydrofluorocarbons, Intergovernmental relations, Methane, Nitrous oxide, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride.

40 CFR Part 71

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Greenhouse gases, Hydrofluorocarbons, Methane, Nitrous oxide, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride.

Dated: February 24, 2012.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 52—[AMENDED]

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

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

Subpart A—[Amended]

2. In § 52.21, add paragraph (dd) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(dd) *Synthetic minor permits.* The provisions in paragraphs (dd)(1) through (dd)(7) of this section govern issuance of, and compliance with, synthetic minor permits that the Administrator may issue to owners or operators of GHG-emitting sources.

(1) *Authority to issue GHG synthetic minor permits.* (i) The Administrator may issue a GHG synthetic minor permit, when requested by the owner or operator of a GHG-emitting source that contains one or more emissions limitations that have the effect of reducing the potential to emit GHGs to:

(*a*) Below a level of GHG emissions (expressed as CO_2e and computed in accordance with paragraph (b)(49)(ii) of this section) specified in the ''subject to regulation'' definition contained in paragraph (b)(49)(iv) of this section;

(*b*) Below the major stationary source applicability thresholds contained in paragraph (b)(1) of this section; and/or

(*c*) Below the significant rate contained in paragraph (b)(23)(i) of this section, or when no significant rate for GHG is contained in that paragraph, to a level of no net emissions increase as specified in paragraph (b)(23)(ii) of this section.

(ii) The Administrator may issue a GHG synthetic minor permit for purposes of:

(*a*) Allowing the GHG-emitting source to avoid applicability of paragraphs (j) through (r)(5) of this section, for that source's GHG emissions, or

(*b*) Establishing a creditable GHG emissions reduction on either a tpy mass basis, or on a CO_2e basis (as computed in accordance with paragraph (b)(49)(ii) of this section).

(iii) Such permits shall contain restrictions that are legally enforceable and enforceable as practical matter.

(iv) Nothing in this paragraph relieves an owner or operator of a GHG-emitting source from complying with any federal or state requirements that otherwise apply to the source.

(2) *Definitions.* For purposes of paragraph (dd) of this section, the definitions in paragraphs (dd)(2)(i) through (iv) of this section apply. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (b) of this section or in the Act.

(i) *Emissions limitation* means a requirement established by the Administrator which limits the quantity, rate, or concentration of GHG emissions on a continuous basis, including any requirement relating to the operation or maintenance of one or

more emissions units to assure continuous emissions reduction, and any design standard, equipment standard, work practice, operational standard, or pollution prevention technique when the Administrator can compute the effect of such requirements on the potential to emit GHGs of the emission unit(s)o and such requirement is legally enforceable and enforceable as a practical matter.

(ii) *GHG-emitting source* means any stationary source that emits or has the potential to emit GHGs in amounts that are at or above the major stationary source thresholds contained in paragraph (b)(1) of this section, and is also:

(*a*) A major stationary source for any other regulated NSR pollutant;

(*b*) A new major stationary that will emit or have the potential to emit 100,000 tpy CO_2e; or

(*c*) A stationary source that emits or has the potential to emit 100,000 tpy CO_2e.

(iii) *GHG synthetic minor permit* means a permit that the Administrator issues to a GHG-emitting source that contains one or more emissions limitations that allows the source to become a GHG synthetic minor source; reduces potential to emit GHGs to a level below the significant rate contained in paragraph (b)(23) of this paragraph; reduces potential to emit GHGs to a level that assures that there is no net emissions increase from the GHG-emitting source, and/or creates a creditable emissions reduction for GHGs under paragraph (b)(3) of this section.

(iv) *GHG synthetic minor source* means a GHG-emitting source that, in absence of the Administrator's issuance of a synthetic minor permit, would have the potential to emit GHGs in amounts that are at or above the subject to regulation thresholds contained in paragraph (b)(49) of this section, and the major stationary source thresholds contained in paragraph (b)(1) of this section, but has obtained a synthetic minor permit to limit the potential to emit GHGs to below either of these amounts.

(3) *Permit application requirements.* As part of a permit application requesting a GHG synthetic minor permit, the owner or operator of a GHG-emitting source shall submit the following information to the Administrator for approval:

(i) Identifying information, including the name and address of the owner or operator (and plant name and address if different), and the name and telephone number of the plant manager/contact.

(ii) A description of any ongoing or future planned construction activity that involves or affects emission units identified in paragraph (dd)(3)(iii) of this section, or involves construction of new emissions unit(s); and the commencement date of construction, the anticipated completion date, and the anticipated date each emissions unit will resume or begin regular operations.

(iii) A list of all emissions units that are located at the GHG-emitting source that emit GHGs; and any new emissions units identified in paragraph (dd)(3)(ii) of this section.

(iv) For each emissions unit identified in paragraph (dd)(3)(iii) of this section, the unit's potential to emit GHGs along with supporting calculations.

(*a*) For purposes of this application, the potential to emit of each emissions unit shall be computed without considering any emissions limitations that might be established through the Administrator's issuance of a GHG synthetic minor permit.

(*b*) Such calculations shall include fugitive emissions, to the extent that they are quantifiable, if the emissions unit or GHG-emitting source belongs to one of the source categories listed in paragraph (b)(1)(iii) of this section.

(v) An identification of each emissions unit for which the permit applicant requests that the Administrator establish an emissions limitation, along with the following information:

(*a*) The proposed emissions limitation for each emissions unit and a description of its effect on the potential to emit of the emissions unit. The proposed emission limitations must be expressed over the shortest practicable time period, taking into consideration the operation of the source and the methods to be used for demonstrating compliance.

(*b*) Proposed testing, monitoring, recordkeeping, and reporting requirements to be used to demonstrate and assure compliance with the proposed emissions limitation.

(*c*) A description of the production processes.

(*d*) Identification of the emissions units.

(*e*) Type and quantity of fuels and/or raw materials used, if applicable.

(*f*) Description and estimated efficiency of air pollution control equipment under present and anticipated operating conditions.

(*g*) Estimates of the current actual emissions, including all calculations for the estimates.

(*h*) Estimates of the potential to emit that would result from compliance with the proposed emissions limitation, including all calculations for the estimates.

(*i*) An identification of other federal requirements with which the emissions unit must comply.

(vi) Any other information specifically requested by the Administrator.

(4) *Procedures for obtaining a synthetic minor permit.* (i) The owner or operator of the GHG-emitting source must submit a permit application to the Administrator. The application must contain the information specified in paragraph (dd)(3) of this section.

Option 1 for paragraphs (dd)(4)(ii) and (iii):

(ii) Within 60 days after receipt of an application, the Administrator will determine if it contains the information specified in paragraph (dd)(3) of this section.

(iii) If the Administrator determines that the application is not complete, the Administrator will request additional information from the owner or operator as necessary to process the application. If the Administrator determines that the application is complete, the Administrator will notify the owner or operator in writing. The Administrator should postmark the completeness determination or request for additional information within 60 days of receipt of the permit application. The application is deemed complete if the Administrator does not request additional information, or send a notice of complete application postmarked within 60 days of receipt of the permit application.

Option 2 for paragraphs (dd)(4)(ii) and (iii):

(ii) Within 30 days after receipt of an application, the Administrator will determine if it contains the information specified in paragraph (dd)(3) of this section.

(iii) If the Administrator determines that the application is not complete, the Administrator will request additional information from the owner or operator as necessary to process the application. If the Administrator determines that the application is complete, the Administrator will notify owner or operator in writing. The Administrator should postmark the completeness determination or request for additional information within 30 days of receipt of the permit application by the Administrator.

(iv) The Administrator will prepare a draft synthetic minor permit that describes the proposed emissions limitation(s) and the effect of such emissions limitation(s) on the potential emissions from any projects identified in paragraph (dd)(3)(ii) of this section, and the potential to emit GHGs of both

the emissions units identified in paragraph (dd)(3)(iii) of this section and the GHG-emitting source.

(v) The Administrator must provide an opportunity for public comment and public participation on the draft synthetic minor permit as set out in paragraphs (dd)(6) of this section.

(vi) After the close of the public comment period, the Administrator will review all comments received and either prepare a final synthetic minor permit or a written explanation of the reasons for a decision to deny the application for the synthetic minor permit.

(vii) The final synthetic minor permit is subject to administrative and judicial review as set out in paragraph (dd)(7) of this section.

(5) *Permit Content.* The permit must include the requirements in paragraphs (dd)(5)(i) through (vii) of this section.

(i) *General Requirements.* The following elements must be included in the permit:

(*a*) The effective date of the permit, and an effective date for any terms and conditions of the permit, if such date differs from the effective date of the permit; and

(*b*) An identification of the emissions units subject to the permit and each emissions unit's associated emissions limitations.

(ii) *Emissions limitations.* The permit must contain one or more emissions limitations. Each emissions limitation must meet the requirements of paragraphs (dd)(5)(ii)(*a*) through (*d*) of this section.

(*a*) To effectively reduce the potential to emit of one or more emissions units at the GHG-emitting source, the permit must include an emissions limitation that is legally enforceable and enforceable as a practical matter, and is expressed over the shortest practicable time period, generally not to exceed a 12-month rolling total.

(*b*) Such emissions limitation must consist of one or more numerical limitations on the quantity, rate, or concentration of GHG emissions on either a mass or CO_2e basis that is expressed over the shortest practical time period and that is legally enforceable and enforceable as a practical matter. If it is impracticable to impose a numerical limitation, then the Administrator may establish pollution prevention requirements, design standards, equipment standards, work practices, operational standards, or maintenance standards, when the Administrator can compute the effect of such restrictions on the emissions unit's or GHG-emitting source's potential to emit GHG and the requirements are legally enforceable and enforceable as a practical matter. The Administrator may also establish any combination of the above requirements.

(*c*) A statement that the emissions limitation applies at all times including startup, shutdown, and malfunction unless a separate emissions limitation applies to these emissions, and such emissions are expressly excluded from an emissions limitations, or the Administrator directs otherwise in the permit.

(*d*) The calculation procedure the owner or operator will use to convert the monitoring system data to emissions data to demonstrate compliance with the emissions limitation.

(iii) *Monitoring requirements.* The permit must include monitoring requirements sufficient to assure compliance with the emissions limitations. The Administrator must require, as appropriate, any of the requirements in paragraphs (dd)(5)(iii)(*a*) and (*b*) of this section.

(*a*) A requirement to monitor, including analysis procedures, test methods, periodic testing, instrumental monitoring, and non-instrumental monitoring. Such monitoring requirements shall assure use of test methods, units, averaging periods, and other statistical conventions consistent with the required emissions limitations.

(*b*) As necessary, requirements concerning the use, maintenance, and installation of monitoring equipment or methods.

(iv) *Recordkeeping requirements.* The permit must include recordkeeping requirements sufficient to assure compliance with the emissions limitations and monitoring requirements, and must require the elements in paragraphs (dd)(5)(iv)(*a*) through (*c*) of this section.

(*a*) Records of required monitoring information that include the information in paragraphs (dd)(5)(iv)(*a*)(*1*) through (*6*) of this section, as appropriate.

(*1*) The location, date, and time of sampling or measurements.

(*2*) The date(s) analyses were performed.

(*3*) The company or entity, and the name of the specific individuals that performed the analyses.

(*4*) The analytical techniques or methods used.

(*5*) The results of such analyses.

(*6*) The operating conditions existing at the time of sampling or measurement.

(*b*) Retention for 5 years of records of all required monitoring data and support information for the monitoring sample, measurement, report, or application. Support information may include all calibration and maintenance records, all original strip-chart recordings or digital records for continuous monitoring instrumentation, and copies of all reports required by the permit.

(*c*) A copy of the synthetic minor permit application and any additional information requested by the Administrator to support the application.

(v) *Reporting requirements.* The permit must include the reporting requirements in paragraphs (dd)(5)(v)(*a*) through (*d*) of this section.

(*a*) Annual submittal of total GHG emissions and calculations for each emissions unit subject to an emissions limitation in the synthetic minor permit. Such calculations shall be based on the terms and conditions in the permit that limit GHG emissions. Where necessary for a calculation of annual GHG emissions, the permit must require reporting of actual hours of operation, material used, and other relevant metrics.

(*b*) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Within the permit, the Administrator must define ''prompt'' in relation to the degree and type of deviation likely to occur and the applicable emissions limitations.

(*c*) For each requirement in the permit, an annual submission of a compliance certification signed by the owner or operator, attesting to the GHG-emitting source's compliance with such requirement, or a statement that the GHG-emitting source failed to comply with the requirement and an explanation of such non-compliance. For purposes of complying with this reporting requirement, the owner or operator may concurrently attest to all requirements with which it complied, but must address each requirement with which it failed to comply separately.

(*d*) A requirement to notify the Administrator in writing within 30 days from the date the operator begins actual construction, and any construction activity completes, and when regular operations begin, for any project involving or affecting any emissions unit that is subject to a requirement in the synthetic minor permit.

(*e*) A requirement to provide all reports electronically, unless the Administrator has not provided a system for such electronic reporting.

(*1*) For projects involving or affecting multiple emissions units, the notification must be submitted within

30 days from when such activities first occur for any emissions unit.

(*2*) If such activity was not already described in the permit application as required by paragraph (dd)(3) of this section, the notification shall identify the emissions units involved in or affected by the project, and describe the nature of the construction activity and any affect such activity will have on the potential to emit of an emissions unit, or on the GHG-emitting source, otherwise the notification should reference the permit application.

(vi) *Severability clause.* A statement stating that the provisions of this synthetic minor permit are severable, and if any provision of the permit is held invalid, the remainder of the permit shall not be affected.

(vii) *Additional provisions.* The permit must also contain provisions stating the requirements in paragraphs (dd)(5)(vii)(*a*) through (*g*) of this section.

(*a*) You, as the permittee, must comply with all conditions of your permit, including emissions limitations that apply to the emissions units at your source. Noncompliance with any permit term or condition is a violation of the permit and may constitute a violation of the Act and is grounds for enforcement action and for a permit termination or revocation.

(*b*) It is not a defense for you, as the permittee, in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(*c*) The Administrator may reopen, revise, terminate or revoke the permit. The filing of a request by you, as the permittee, for a permit revision, revocation, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(*d*) The permit does not relieve the permittee from complying with any federal or state requirements that otherwise apply to the source.

(*e*) The permit does not convey any property rights of any sort or any exclusive privilege.

(*f*) You, as the permittee, shall furnish to the Administrator, within a reasonable time, any information that the Administrator may request in writing to determine whether cause exists for reopening, revising, revoking, or terminating the permit or to determine compliance with the permit. For any such information claimed to be confidential, you must also submit a claim of confidentiality in accordance with part 2, subpart B of this chapter.

(*g*) You, as the permittee, must allow a representative of the Administrator (who must comply with the safety requirements of the permittee) to:

(*1*) Enter upon your premises where the source is located or emissions-related activity is conducted, or where records are required to be kept under the conditions of the permit;

(*2*) Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;

(*3*) Inspect, during normal business hours or while the source is in operation, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(*4*) Sample or monitor, at reasonable times, substances or parameters for the purpose of determining compliance with the permit or other applicable requirements; and

(*5*) Record any inspection by use of written, electronic, magnetic, and photographic media.

(6) *Public participation requirements.* This paragraph applies to the issuance of synthetic minor permits.

(i) *Public availability of documents.* With the exception of any confidential information as defined in part 2, subpart B of this chapter, the Administrator must make available for public inspection the documents listed in paragraphs (dd)(6)(i)(*a*) through (*d*) of this section. The Administrator must make such information available for public inspection at the appropriate EPA Regional Office.

(*a*) All information submitted as part of an application for a permit.

(*b*) Any additional information requested by the Administrator.

(*c*) The Administrator's analysis of the application and any relevant, additional information submitted by the source.

(*d*) A copy of the draft permit or the decision to deny the permit with the justification for denial.

(ii) *Public notice requirements.* (*a*) Before issuing a synthetic minor permit, the Administrator must prepare a draft permit and must provide adequate public notice to ensure that the area affected has reasonable access to the application and draft permit information, as set out in paragraphs (dd)(6)(ii)(*a*)(*1*) and (*2*) of this section. The public notice must provide an opportunity for public comment, and may provide notice of a public hearing on the draft permit.

(*1*) The Administrator must mail a copy of the notice to the GHG-emitting source, and the state, and local air pollution authorities having jurisdiction in the area in which the GHG-emitting source is located.

(*2*) The Administrator will use appropriate means of notification, depending on such factors as the nature and size of your source, local air quality considerations, and the characteristics of the population in the affected area. Appropriate means include those listed in paragraphs (dd)(6)(ii)(*a*)(*2*)(*i*) through (*v*) of this section.

(*i*) The Administrator may mail or email a copy of the notice to persons on a mailing list developed by the Administrator consisting of those persons who have requested to be placed on such a mailing list.

(*ii*) The Administrator may post the notice on its Web site.

(*iii*) The Administrator may publish the notice in a newspaper of general circulation in the area affected by the source.

(*iv*) The Administrator may provide copies of the notice for posting at one or more locations in the area affected by the source, such as post offices, trading posts, libraries, tribal environmental offices, community centers, or other gathering places in the community.

(*v*) The Administrator may employ other means of notification as appropriate.

(*b*) The notice required pursuant to paragraph (dd)(6)(ii)(*a*) of this section must include the following information at a minimum:

(*1*) Identifying information, including the name and address of the owner and operator of the GHG-emitting source (and plant name and address if different) and the name and telephone number of the plant manager/contact;

(*2*) The name and address of the reviewing authority processing the permit action;

(*3*) An explanation of any emissions changes that will result from the permit action;

(*4*) A description of the proposed emissions limitation(s) and its effect on the potential to emit of a project, one or more emissions units, or the GHG-emitting source;

(*5*) Instructions for requesting a public hearing;

(*6*) The name, address, and telephone number of a contact person in the reviewing authority's office from whom additional information may be obtained;

(*7*) Locations and times of availability of the information (listed in paragraph (dd)(6)(i) of this section) for public inspection; and

(*8*) A statement that any person may submit written comments, a written request for a public hearing, or both, on the draft permit action and the time frames by which any person must take such action(s).

(iii) *Public comment.* (*a*) The Administrator must provide at least 30 days from the date of public notice provided under paragraph (dd)(6)(ii) of this section for the public to submit comments on the draft permit. The Administrator may extend this period if he or she determines it is appropriate to do so.

(*b*) Any person may submit written comments on the draft permit during the public comment period. These comments must raise any reasonably ascertainable issue with supporting arguments by the close of the public comment period.

(*c*) The public comment period under paragraph (dd)(6)(iii)(*a*) of this section will not close before the date of any public hearing held in accordance with paragraph (dd)(6)(iv) of this section. The hearing officer may also extend the comment period by so stating at the hearing.

(iv) *Public Hearing.* (*a*) Any person may request a public hearing on a permit, but such request must be submitted to the Administrator, in writing, and must state the nature of the issues proposed to be raised at the hearing, and must be postmarked no later than 15 days after the Administrator provides public notice of the draft permit under paragraph (dd)(6)(ii) of this section.

(*b*) The Administrator must hold a hearing whenever there is, on the basis of requests and the issues raised therein, a significant degree of public interest in a draft permit. The Administrator may also hold a public hearing at the Administrator's discretion whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(*c*) The Administrator must provide notice, consistent with the requirements in paragraph (dd)(6)(ii) of this section, that the Administrator will hold a public hearing. Such notice must be provided at least 15 days before the date of the hearing. Public notice of the hearing may be concurrent with that of the draft permit, and the two notices may be combined.

(*d*) The Administrator may set reasonable limits on the time allowed for oral statements at the hearing.

(*e*) The Administrator must make a tape recording or written transcript of any hearing available to the public as part of the final administrative record for the permit under paragraph (dd)(7)(iii) of this section.

(7) *Final permit issuance and administrative and judicial review*—(i) *Notification of the final permit decision.* The Administrator must notify the GHG-emitting source of the final permit decision, in writing, and if the permit is denied, of the reasons for such denial. The Administrator must also provide adequate public notice of the final permit decision, consistent with the provisions in paragraph (dd)(6)(ii) of this section.

(ii) *Effective date of the permit.* A final permit becomes effective 30 days after the Administrator issues the permit, unless:

(*a*) A later effective date is specified in the permit; or

(*b*) Review of the final permit is request under paragraph (dd)(7)(iv), in which case the effective date of the permit is stayed until the Administrator issues a notice of final agency action under paragraph (dd)(7)(iv)(b), unless the Administrator notifies the Environmental Appeals Board, and the applicant, and all of the interested parties, that the permit contains uncontested and severable conditions, in which case, these conditions shall become fully effective enforceable obligations of the permit as specified in paragraph (dd)(7)(ii)(a) of this section, but the remainder of the permit conditions will be stayed as specified in this paragraph; or

(*c*) The Administrator may make the permit effective immediately upon issuance if no comments requested a significant change in the draft permit or provided a technical justification for why the Administrator should deny the permit.

(iii) *Administrative record.* (*a*) The Administrator must base final permit decisions on an administrative record consisting of:

(*1*) The application and any supporting data furnished by the applicant;

(*2*) The draft permit or notice of intent to deny the application;

(*3*) Other documents in the supporting files for the draft permit that the Administrator considered in the decisionmaking;

(*4*) All significant comments received during the public comment period;

(*5*) The tape or transcript or other electronic record of any hearing(s) held;

(*6*) Any written material submitted at such hearing(s);

(*7*) Any new materials placed in the record as a result of the Administrator's evaluation of public comments;

(*8*) The final permit; and

(*9*) Other documents in the supporting files for the final permit that the Administrator considered in the final decisionmaking.

(*b*) The Administrator must add the additional documents required under paragraph (dd)(7)(iii)(*a*) of this paragraph to the record as soon as possible after their receipt or preparation by the Administrator. The record is complete on the date the Administrator issues the final permit.

(*c*) Material readily available or published materials that are generally available and that are included in the administrative record under the standards of paragraph (dd)(7)(iii)(*a*) of this paragraph need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the that file.

(iv) *Appealing a permit decision.* Permit decisions may be appealed according to the following provisions:

(*a*) The Administrator delegates authority to the Environmental Appeals Board (the Board) to issue final decisions in permit appeals filed under this program. An appeal directed to the Administrator, rather than to the Board, will be forwarded to the Board for consideration. This delegation does not preclude the Board from referring an appeal or a motion under this program to the Administrator when the Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Board, all parties shall be so notified and the provisions of this program referring to the Board shall be interpreted as referring to the Administrator.

(*b*) Any person seeking to appeal a permit decision must follow the provisions for PSD permits in § 124.19 of this chapter.

(*c*) The final synthetic minor permit is subject to administrative and judicial review as set out in § 124.19 of this chapter.

(v) *Permit Revisions.* (*a*) The Administrator may reopen, revise, terminate, or revoke requirements within the synthetic minor permit, or may take such action on the entirety of the synthetic minor permit. Such actions may be taken by the Administrator for cause on its own initiative, or at the request of the permittee.

(*b*) Except for administrative permit revisions identified in paragraph (dd)(7)(vi) of this section, the Administrator shall follow all of the public participation requirements in paragraphs (dd)(6) of this section before revising, revoking, or terminating requirements in the synthetic minor permit.

(*c*) All changes to a permit are subject to the effective date, and administrative review requirements contained in paragraph (dd)(7)(i) through (iv) of this section.

(vi) *Administrative permit revision.* The following provisions govern administrative permit revisions.

(*a*) An administrative permit revision is a permit revision that makes any of the following changes:

(*1*) Corrects typographical, calculation or other errors.

(*2*) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source.

(*3*) Requires more frequent monitoring or reporting by the permittee.

(*4*) Allows for a change in ownership or operational control of a GHG-emitting source when the Administrator determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Administrator.

(*5*) Incorporates any other type of change that the Administrator determines is similar to those in paragraphs (dd)(*7*)(vi)(*a*)(*1*) through (*5*) of this section.

(*b*) An administrative permit revision is not subject to the permit application, issuance, public participation or administrative requirements of this program.

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