review is limited to only those objections that were raised with reasonable specificity in timely comments. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

VI. Statutory Authority

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

List of Subjects in 40 CFR Part 52

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

Dated: December 23, 2010.

Lisa P. Jackson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. Section 52.1987 is revised to read as follows:

§ 52.1987 Significant deterioration of air quality.

* * * * *

(d) The requirements of sections 160 through 165 of the Clean Air Act are not met for greenhouse gases since the plan does not include approvable procedures for permitting major sources of greenhouse gas emissions. Therefore, the Oregon Department of Environmental Quality rules identified in paragraph (a) of this section, and the Lane Regional Air Pollution Authority rules identified in paragraph (b) of this section, are hereby incorporated by reference with the following changes and made part of the applicable plan for the State of Oregon:

(1) The definition of "*Regulated NSR pollutant*" at § 52.21(b)(50) and the definition of "*Subject to regulation*" at § 52.21(b)(49) are incorporated by reference, replacing the definition of "Regulated air pollutant" at OAR 340–200–0020(97), for the purpose of greenhouse gases only;

(2) The provisions of § 52.21(q) *Public participation* are incorporated by reference for the purposes of EPA permits issued pursuant to this paragraph; and

(3) All references to "Director" in the Oregon Department of Environmental Quality rules and the Lane Regional Air Pollution Authority rules incorporated in this paragraph shall mean the EPA Administrator for the purposes of EPA permits issued pursuant to this paragraph.

■ 3. Section 52.37 is added to read as follows:

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

(a) The requirements of sections 160 through 165 of the Clean Air Act are not met to the extent the plan, as approved, of the states listed in paragraph (b) of this section does not apply with respect to emissions of the pollutant GHGs from certain stationary sources. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby made a part of the plan for each state listed in paragraph (b) of this section for:

(1) Beginning January 2, 2011, the pollutant GHGs from stationary sources described in § 52.21(b)(49)(iv), and

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

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

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

(2) Arkansas;

(3) Florida;

(4) Idaho;

(5) Kansas;

(6) Wyoming.

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

[FR Doc. 2010–32784 Filed 12–29–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–HQ–OAR–2009–0517; FRL–9245–4]

RIN 2060–AQ63

Action To Ensure Authority To Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: The final greenhouse gas (GHG) Tailoring Rule includes a step-by-step implementation strategy for issuing Federally-enforceable permits to the largest, most environmentally significant sources beginning January 2, 2011. In this action, EPA is finalizing its proposed rulemaking to narrow EPA's previous approval of State title V operating permit programs that apply (or may apply) to GHG-emitting sources. Specifically, in this final rule, EPA is narrowing its previous approval of certain State permitting thresholds for GHG emissions so that only sources that equal or exceed the GHG thresholds established in the final Tailoring Rule would be covered as major sources by the Federally-approved programs in the affected States. By raising the GHG thresholds that apply title V permitting to major sources in the affected States, this final rule will reduce the number of sources that will be issued Federally-enforceable title V permits and thereby significantly reduce permitting burdens for permitting agencies and sources alike in those States.

DATES: This final rule is effective on December 30, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0517. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, Northwest, 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 EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Herring, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–3195; fax number: (919) 541–5509; e-mail address: *herring.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: For information related to a specific State, local, or Tribal permitting authority, please contact the appropriate EPA regional office:

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

I. General Information

A. Does this action apply to me?

Entities affected by this action include States, local permitting authorities, and Tribal authorities.

Entities potentially affected by this rule also include sources in all industry groups, which have a direct obligation under the Clean Air Act (CAA or Act) to apply for and operate pursuant to a title V permit for GHGs that meet the applicability thresholds set forth in the Tailoring Rule. The majority of 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.

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

[a] North American Industry Classification System.

B. How is this preamble organized?

The information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. How is this preamble organized?
II. Overview of the Final Rule
III. Proposed Rule
IV. Final Rule
A. Narrowing of Title V Programs Under Parts 70 and 52
B. Legal Basis
1. Title V Applicability
2. Minimum Requirements for Approved Title V Programs
3. Basis for Reconsideration and Narrowing of Approval
C. Authority for EPA Action
V. Comments and Responses
VI. Effective Date
VII. Statutory and Executive Orders Reviews
A. Executive Order 12866—Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132—Federalism
F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
L. Judicial Review

II. Overview of the Final Rule

This action finalizes EPA's proposal to narrow the approval of title V operating permit programs that we included in what we call the proposed Tailoring Rule, "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule: Proposed Rule," 74 FR 55292, 55340 (October 27, 2009). EPA finalized the Tailoring Rule by **Federal Register** notice dated June 3, 2010, "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule: Final Rule," 75 FR 31,514.

In the final Tailoring Rule, EPA narrowed the applicability of title V to GHG-emitting sources at or above specified thresholds by setting thresholds at which GHG emissions become subject to regulation for Prevention of Significant Deterioration (PSD) and title V purposes.[1] Title V requires all "major sources," and certain other sources, to apply for and operate pursuant to an operating permit, which is generally issued by a State or local permitting authority pursuant to an approved State title V program. As discussed in more detail subsequently, "major source" under title V includes any source that emits, or has the potential to emit, 100 tons per year (tpy) or more of any air pollutant. Under EPA's longstanding interpretation, codified in the final Tailoring Rule, this requirement applies to emissions of air pollutants "subject to regulation." Absent the Tailoring Rule, GHGs would become "subject to regulation" for title V purposes on January 2, 2011. Under the Tailoring Rule, however, a source becomes a "major source" subject to title V requirements based on its GHG emissions only if, as of July 1, 2011, it emits GHGs at or above 100,000 tpy measured on a carbon dioxide equivalent (CO_2e) basis, and it also emits GHGs at levels at or above the statutory 100 tpy mass-based threshold generally applicable to all pollutants subject to regulation. The Tailoring Rule thresholds alleviate the overwhelming administrative burdens and costs that using the statutory thresholds alone for the permitting thresholds would place on title V permitting authorities and sources.

However, in proposing the Tailoring Rule, EPA recognized that even after it finalized the Tailoring Rule, some approved State title V programs would—until they were revised—continue to use the statutory thresholds for purposes of the permitting thresholds, even though the States would not have sufficient resources to implement the title V program at those levels. Accordingly, the proposed Tailoring Rule included a proposal to limit EPA's previous approval of title V programs to the extent those provisions required permits for sources whose emissions of GHG equal or exceed 100 tpy but are less than the permitting threshold of the Tailoring Rule.[2] When EPA finalized the Tailoring Rule, EPA did not finalize that part of the proposal. Instead, EPA waited to collect more information from the States to determine whether such action was necessary, and if so, for which States. As detailed in the following, EPA is now finalizing that part of the Tailoring Rule proposal for most permitting authorities.

EPA asked States to submit information—in the form of letters due within 60 days of publication of the Tailoring Rule (which we refer to as the 60-day letters)—that would help EPA determine whether it needed to narrow its approval of any title V programs. Some States informed EPA in their "60 day letters" or subsequently that they have adequate authority to issue permits to sources of GHGs and that they have interpreted the requirements of their approved title V programs consistent with the final Tailoring Rule thresholds. Other States and permitting authorities either indicated that their programs would require changes to permit GHG sources at the final Tailoring Rule thresholds, or did not provide a clear indication of the scope of their title V programs with respect to GHG sources.

Thus, in this action, EPA is narrowing its previous approval of most State title V programs to the extent the programs require title V permits for sources of GHG emissions below the Tailoring Rule thresholds. The other portions of these title V programs, including portions requiring permits for GHG-emitting sources with emissions at or above the Tailoring Rule thresholds, remain approved. States affected by this rule will not be required to take any action under the Federal CAA as a result of this rule.

The effect of EPA narrowing its approval in this manner is that there will be no Federally-approved title V program that requires permits for sources due to emissions of GHG below

[1] Only the title V provisions are relevant for this action.

[2] The permitting threshold originally proposed for the Tailoring Rule was 25,000 tpy CO_2e. After considering public comment on the proposal, EPA increased its estimates of the costs and burdens of permitting and finalized a permitting threshold of 100,000 tpy CO_2e.

the final Tailoring Rule threshold of 100,000 tpy CO_2e (and 100 tpy mass basis). This action ensures that the Federally-approved programs applicable in the affected States do not require title V permitting for sources due to their status as major sources of GHG emissions as of January 2, 2011.

III. Proposed Rule

We assume familiarity here with the statutory and regulatory background discussed in the preambles for the Tailoring Rule proposal and final action, and will only briefly summarize that background here.

Title V of the CAA requires, among other things, a "major source" to obtain an operating permit that: consolidates all CAA requirements applicable to the source into a document; includes conditions necessary to assure compliance with such requirements; provides for review of these documents by EPA, States, and the public; and requires permit holders to track, report, and annually certify their compliance status with respect to their permit requirements.

A "major source" is defined to include, among other things, a source that actually emits or has the potential to emit 100 tpy or more of "any air pollutant." CAA sections 501(2), 302(j). *See also* 40 CFR 70.2 and 71.2. Since 1993, EPA has interpreted the CAA to define a "major source" for purposes of title V to include any source that emits, or has the potential to emit, at least 100 tpy of an air pollutant subject to regulation under the CAA. Memorandum from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, U.S. EPA, "Definition of Regulated Air Pollutant for Purposes of Title V" (Apr. 26, 1993); 75 FR 31553–54.

In recent months, EPA completed four distinct actions related to regulation of GHGs under the CAA. These actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which we issued in a single final action,[3] the "Johnson Memo Reconsideration" (also called the "Timing Decision"),[4] the "Light-Duty Vehicle Rule" (LDVR, or simply the "Vehicle Rule"),[5] and the "Tailoring Rule."[6] In the Endangerment Finding, which is governed by CAA § 202(a), the Administrator exercised her judgement, based on an exhaustive review and analysis of the science, to conclude that "six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations." 74 FR 66496. 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)." *Id.* The Endangerment Finding led directly to promulgation of the Vehicle Rule, also governed by CAA § 202(a), in which EPA set standards for the emission of GHGs for new motor vehicles built for model years 2012–2016. 75 FR 25324. The other two actions, the Timing Decision and the Tailoring Rule, governed by the PSD and title V provisions in the CAA, were issued to address the automatic statutory triggering of these programs for GHGs due to the establishment of the first controls for GHGs under the Act. More specifically, the Timing Decision reiterated EPA's interpretation that only pollutants subject to regulation under the Act can trigger major source status for purposes of title V, and further concluded that the earliest date GHG would be subject to regulation for purposes of title V would be January 2, 2011. The Tailoring Rule established a series of steps by which PSD and title V permit requirements for GHG could be phased in, starting with the largest sources of GHG emissions. 75 FR 31514.

In the proposed Tailoring Rule, EPA proposed a major stationary source threshold for purposes of title V of 25,000 tpy for GHG on a CO_2e basis, for at least a specified period. EPA recognized that even so, approved State title V programs would—until they were revised—continue to use the statutory threshold of 100 tpy for GHG on a mass basis for purposes of the permitting threshold, even though permits for sources below the Tailoring Rule threshold were not required under Federal regulations and the States would not have sufficient resources to implement the title V program at the statutory threshold for GHG-emitting sources. This would result in the same problems of overwhelming administrative burdens and costs that we designed the Tailoring Rule to address. Accordingly, the proposed Tailoring Rule included a proposal to limit EPA's previous approval of title V programs to the extent those provisions required permits for sources whose emissions of GHG equal or exceed 100 tpy but are less than the permitting threshold of the Tailoring Rule.

EPA relied for its authority for the proposed limitations of approval on CAA section 301(a), as it incorporates the authority of an agency to reconsider its actions, and in the Administrative Procedure Act (APA) section 553. *See* 74 FR 55345. EPA indicated in the proposal that it considered and decided against issuing a notice of deficiency under CAA section 502(i)(1), in part because EPA did not anticipate that program submissions would be necessary following EPA's action to limit approvals. 74 FR 55345–55346.

In the final Tailoring Rule, EPA adopted a 100,000 tpy CO_2e permitting threshold for title V permitting of GHG emissions as of July 1, 2011, committed the agency to take future steps addressing smaller sources, and excluded the smallest sources from title V permitting for GHG emissions until at least April 30, 2016.

The mechanism EPA chose in the final rule to implement the 100,000 tpy CO_2e threshold for GHG emissions was slightly different than what EPA had proposed. In response to comments from States, in place of providing a definition in part 70 of "major source" with thresholds specific to GHG sources, the final Tailoring Rule amended the definition of "major source" to reflect EPA's long-standing interpretation that applicability for "major stationary source" under CAA sections 501(2)(B) and 302(j) and 40 CFR 70.2 and 71.2 is triggered by sources of pollutants "subject to regulation." EPA then reflected the permitting thresholds for GHGs within a definition of the term "subject to regulation" that was also added to parts 70 and 71.

Some States advised EPA that they would likely be able to implement the Tailoring Rule thresholds by interpreting provisions in their approved title V programs. A State's implementation of the Tailoring Rule in this manner would obviate the need for EPA to narrow its approval of the State's title V program. Thus, in the final Tailoring Rule, EPA deferred making any decision regarding whether to narrow its approval of any title V programs until after learning how States intended to implement the Tailoring Rule. Rather than taking final action on

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

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

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

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

our proposal to limit approval for State title V programs, EPA asked States to submit information—in the form of letters due within 60 days of publication of the final Tailoring Rule (which we refer to as the 60-day letters)—that would help EPA determine what action it would need to take to ensure that GHG sources would be permitted consistent with the final Tailoring Rule, and specifically for which States it would need to limit its approval of State title V programs.

Almost all States submitted 60-day letters. After reviewing the letters, some States have indicated that they have been able to interpret their existing approved title V programs in a manner consistent with the final Tailoring Rule. Other permitting authorities indicated that they needed regulatory or legislative changes either to implement title V permitting for GHG sources, or else to apply the final Tailoring Rule thresholds when they implement title V permitting for GHG sources. Some States indicated that some regulatory or legislative changes to their title V programs were necessary, but did not clearly indicate which types of changes were required. In some cases, the State's 60-day letter addressed PSD permitting but not title V permitting, or else did not clearly distinguish between the two programs in discussing how the State intended to implement permitting of GHG sources. Finally, a few States did not submit 60-day letters.

Most States that need to take some action indicated that they were actively in the process of updating their title V programs to be consistent with the final Tailoring Rule. Indeed, many programs were projected, as of the date of the 60-day letter, to be revised to incorporate the Tailoring Rule threshold at the State level before January 2, 2011.

IV. Final Rule

A. Narrowing of Title V Programs Under Parts 70 and 52

EPA is taking final action to narrow its approval of the title V program for certain States. In the final Tailoring Rule, EPA established levels of GHG emissions for purposes of determining applicability of title V. However, most EPA-approved State title V programs currently provide that sources of GHGs will become subject to title V requirements even where the sources emit GHGs below the final Tailoring Rule thresholds. Under the final Tailoring Rule, GHGs emitted below the Tailoring Rule thresholds are not treated as a pollutant "subject to regulation" under the CAA (and thus, under the final Tailoring Rule, a source emitting GHGs below the Tailoring Rule thresholds would not be treated as a major stationary source subject to title V on account of its GHG emissions). Thus, EPA is now narrowing its approval of most approved title V programs so that those title V programs are approved to apply to GHG-emitting sources only if those sources emit GHGs at or above the final Tailoring Rule thresholds. EPA is accomplishing this by reconsidering and narrowing its previous approval of those title V programs to the extent they apply to GHG-emitting sources that emit below the final Tailoring Rule thresholds.

In the proposed Tailoring Rule, EPA proposed to narrow its approval for all 50 States, as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.[7] EPA now finalizes this narrowing of approval for the States with title V programs that will apply to GHG emissions at below-Tailoring Rule levels as of January 2, 2011, and for States that EPA cannot clearly determine do not fall in this category. The States for whom EPA is narrowing its approval of the title V program in this action are: Alabama, California, Colorado, District of Columbia, Georgia, Hawaii, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virgin Islands, Virginia, Washington, West Virginia, and Wisconsin. For all the other States—States with no authority to permit sources due to their status as major sources of GHG or States which apply the Tailoring Rule thresholds by interpretation—EPA is not taking final action on its proposal to narrow its approval of the title V program at this time because those States will not subject GHG sources with emissions below the Tailoring Rule thresholds to the requirements of title V on January 2, 2011.

For most States, title V programs are Federally-approved only under 40 CFR part 70, and EPA need only amend Appendix A to part 70 in order to narrow its approval of the title V program. However, in some cases, States have chosen to submit their title V programs as part of their State implementation plans (SIPs) and EPA has approved those programs into the SIP as codified in 40 CFR part 52. Three States [Arizona (Pinal County Air Quality Control District)], Minnesota, and Wisconsin) whose title V programs require narrowing have title V applicability provisions that were Federally approved under both part 70 and part 52. For these States, EPA is amending its approval of the title V program in both part 70 and part 52, in order to ensure that the scope of the approved title V program is consistent in both parts.

B. Legal Basis

EPA is narrowing its previous approval for most State title V programs because of an important flaw in the approved title V programs. EPA is rescinding its previous approval for the part of the title V program that is flawed, and EPA is leaving in place its previous approval for the rest of the program. Since there is no need under Federal law to permit sources below the final Tailoring Rule threshold, the title V programs whose approval is being narrowed by this action will continue to be fully approved under CAA section 502.

Among the minimum requirements for a title V program are those for "adequate personnel and funding to administer the program." CAA section 502(b)(4). These requirements need to be understood in context of Congress' clear concern for "the need for expeditious action by the permitting authority on permit applications and related matters." CAA section 502(b)(8); *see also* CAA sections 502(b)(6), 502(b)(7), & 503(c), 40 CFR 70.4(b)(8).

The flaw in the prior approved programs is that certain program provisions were phrased so broadly that they could, under certain circumstances, sweep in more sources than the permitting authority could process in an expeditious manner in light of the resources that were available or could be made available. Thus, EPA is narrowing the scope of its approval of those title V provisions to include, for purposes of GHG emissions, only title V permitting for sources emitting GHGs at or above final Tailoring Rule thresholds. EPA believes permitting at these thresholds will require resources at a level consistent with the descriptions of adequate resources the State provided, and EPA determined in the final Tailoring Rule that States will have adequate resources to issue operating permits to sources emitting GHGs at this level.

As noted above, for three States it is necessary to revise the SIP in order to

[7] 40 CFR 70.2 defines "State" to include any non-Federal permitting authority, including local, interstate and statewide permitting authorities, and also including the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories, although "[w]here such meaning is clear from the context, 'State' shall have its conventional meaning." This notice follows the same approach to the use of the term "State."

narrow the approved title V program. The basis for narrowing the program is the same under part 52 as under part 70. Indeed, EPA does not believe it would make sense to narrow its approval under part 70 without also narrowing its approval under part 52. Accordingly, for these States EPA is not only exercising its authority to reconsider its approval of the title V program, but also its authority to reconsider and to correct errors in its approval of a SIP.

EPA is narrowing its approval of the title V programs for all States that have indicated that they have authority under their title V programs to issue permits to sources of GHG emissions, but at the statutory level of 100 tpy or more on a mass emissions basis. As a precautionary measure, EPA is also narrowing its approval for States that did not clearly indicate to EPA whether they are in this situation. EPA recognizes that the actual status of the States subject to this rule varies to some degree; while some States have authority to issue permits to sources due to their emissions of GHGs under their title V programs but at the statutory threshold only, other States may have been able to alter their State regulations but have not yet submitted such changes or had them approved by EPA, and still other States did not provide a 60-day letter with sufficient information to determine the status of their title V permit programs in relation to GHG sources. EPA believes it is appropriate to narrow the approved title V program for all of these States. In the case of programs that have made State-level changes but have not yet received EPA approval for those changes, this approach provides an efficient means of ensuring that at no time is there a requirement under a Federally-approved program for sources below the final Tailoring Rule threshold to obtain a permit. For this reason, as a precautionary matter, EPA is narrowing approval for States that did not inform us that they can implement the thresholds in the final Tailoring Rule under their current approved programs.

Some States may lack authority to require permits for GHG sources at all. Where there is clear and unambiguous evidence that such State programs do not require permits for any sources due to their status as a major source of GHG emissions, EPA is not narrowing such programs, because they do not present the flaw discussed previously.[8] There may be some States that similarly lack authority to issue title V permits to sources due to their status as major sources of GHG emissions, but have not clearly articulated that fact to EPA in their 60-day letters. EPA intends to narrow its approval for all States where the status of the title V program in relation to major sources of GHG is unclear. Although it may turn out that some of these programs do not present the flaw discussed previously, EPA is only narrowing its approval of programs "to the extent" they require sources of GHG in excess of the threshold to apply for title V permits as major sources of GHG. Thus, if indeed a State's program does not require permits for these sources at all, there are no consequences to sources or the permitting authority from EPA's decision to narrow the scope of the State's approval.[9] On the other hand, if EPA were to refrain from narrowing its approval, and then learn that the program indeed does require sources that emit or have the potential to emit 100 tpy or more of GHGs on a mass basis to apply for title V permits, there would be significant adverse consequences for the permitting authority and sources, as described previously in this final rule and in the final Tailoring Rule. Accordingly, EPA is refraining from narrowing the title V programs for States that cannot implement the Tailoring Rule thresholds only if EPA is certain that those State programs do not require permits for sources due to their emissions of GHG.

The following section discusses these issues in more detail, beginning with the title V applicability provisions; then the minimum State program requirements; and then how the two, read together, gave rise to the flaws in the approved State title V programs.

1. Title V Applicability

Each of the States subject to this rule has an approved title V operating permits program and has not clearly indicated to EPA that it has the ability to permit sources of GHG consistent with the thresholds in the final Tailoring Rule. In most of these States, the approved title V program contains applicability provisions that are written broadly to include all pollutants subject to regulation under the CAA for the purposes of determining whether a source is a major source covered by the title V operating permits program. As a result, as soon as EPA promulgates a rule regulating a new pollutant under any provision of the CAA, these title V programs expand to cover additional sources that are major for that new pollutant. Depending on the pollutant, and the number and size of sources that emit it, these applicability provisions could result in a required significant and rapid expansion of the title V program. This is precisely what is happening at present, now that GHG will become subject to regulation under CAA section 202(a) and will become subject to PSD when emitted from certain stationary sources starting on January 2, 2011.

Importantly, the States affected by this action do not interpret their applicability provisions or any other provision in the title V programs to incorporate any limits on title V applicability with respect to new pollutants, and the programs do not contain any other mechanism that would allow the State to interpret applicability more narrowly, at least for GHGs. As a result, the affected States' title V applicability provisions include no way to limit the speed or extent of the expansion a title V program might be required to undergo to address new pollutants.

This sudden expansion of permitting responsibilities is precisely what is now happening in the case of GHGs. As described in the Timing Decision and final Tailoring Rule, GHG will become subject to regulation on January 2, 2011. EPA defined GHGs as the group of six air pollutants made up of carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons, and perfluorocarbons. 75 FR 31514, 31519 (June 3, 2010) (Tailoring Rule discussion); 75 FR 25324 (May 7, 2010) (LDVR). Absent the limits of the final Tailoring Rule, sources that emit or have the potential to emit at least 100 tpy of GHGs would be potentially subject to title V permitting as of that date. EPA does not have information showing that the approved title V programs in States subject to this rule can interpret their programs more narrowly, to apply to only GHG-emitting sources at or above the final Tailoring Rule thresholds. In contrast, as noted elsewhere, several other States are able to interpret their title V programs more narrowly and, as a result, are not subject to this action.

[8] If a State with an approved title V program lacks any authority to permit sources that are major sources subject to title V as a result of their GHG emissions, then there is no title V permit program "applicable to the source" and those sources in that State have no obligation to apply for a title V permit until after such time as a permit program becomes applicable to them. See CAA section 503(a). EPA intends to work with States, through program revisions, notices of deficiency and/or application of the Federal title V program, in order to assure that major sources of GHGs in all States are subject to title V programs.

[9] Likewise, if a State did not provide sufficient information to EPA in a 60-day letter and it turned out that the State could apply the permitting thresholds of the final Tailoring Rule under its existing approved title V program, there would be no harm to the permitting authority or sources as a result of EPA's decision to narrow its approval consistent with the final Tailoring Rule thresholds.

The scale of the administrative program needed to effectively permit all sources emitting GHGs at the 100 tpy level has highlighted the unconstrained nature of the title V program's applicability provisions. EPA has recognized that immediately subjecting major sources of GHGs at the 100 tpy level to title V requirements is administratively unmanageable and creates absurd results that were not intended by Congress when it enacted title V. Thus, in the final Tailoring Rule, EPA implemented limits on when GHGs become "subject to regulation" for purposes of title V, such that emissions of GHGs will not trigger major source status, and thus will not trigger title V permit requirements, unless the source emits both 100 tpy of GHG on a mass basis and 100,000 tpy CO_2e of GHG as of July 1, 2011 or later. EPA included this limit in its regulations, and through this limit greatly reduced the extent of title V applicability. This limit was set at a level at which EPA determined States would have the resources to implement a title V program for GHG emissions. By contrast, the approved State programs that are subject to this rule do not incorporate the thresholds of the final Tailoring Rule. As a result, many or all of these State programs implement title V applicability for GHG sources more broadly—indeed, much more broadly, to far more sources and to much smaller sources—than EPA's regulations do. This is problematic to the extent it may interfere with the State's ability to meet minimum requirements for title V programs, as discussed in the following section.

2. Minimum Requirements for Approved State Title V Programs

Each of the States subject to this rule submitted a title V program for approval. In order to be approved by EPA, the State program was required to meet certain minimum requirements laid out in the CAA and in 40 CFR part 70. One of these requirements, contained in section 502(b)(4), specifies that every program must provide "for adequate personnel and funding to administer the program." These requirements are further detailed in 40 CFR 70.4(b)(6) through (b)(8).

As noted previously in this rule, and in the Tailoring Rule, the CAA also contains several other provisions making clear Congress' intent that title V permits be processed in an expeditious manner, and these are likewise reflected in 40 CFR part 70. *See* generally CAA section 502 and 40 CFR 70.4.

Therefore, at the time that the State submitted the title V program for EPA approval, the title V program was required to include assurances that adequate resources would be available to process title V permits in an expeditious manner, according to the requirements of the CAA and part 70.

The title V programs affected by this action, however, will not be able to meet these minimum requirements for a title V program as a result of their applicability to GHG-emitting sources. In the proposed and final Tailoring Rule, EPA stated that on a nationwide basis, applying title V to GHG-emitting sources at the 100 tpy level will result in far greater numbers of sources (over 6 million) requiring permitting than currently do (about 15,000), and the great majority of these additional sources would be smaller than the sources currently subject to title V. EPA added that the administrative burdens associated with permitting these large numbers of small sources would overwhelm the affected permitting authorities. As a result, for each State, EPA proposed to rescind approval of the part of the title V program that applies title V to GHG-emitting sources below the Tailoring Rule thresholds. During the comment period on this proposal, no authority contested this understanding of the facts, none stated that it could administer title V at the 100 tpy levels, and none contested the proposal on grounds that it has adequate resources. In the final Tailoring Rule, EPA refined, on the basis of comments, the precise extent of the administrative burden, but confirmed that the burden was overwhelming and that States lacked adequate resources. As noted above, in the final Tailoring Rule, EPA requested that States submit letters within 60 days of publication of the rule describing how they intended to implement title V for GHG-emitting sources. In those letters, none of the States claimed they could, or intended to, implement the approved title V program at the statutory levels. From all this, it is clear that none of the States had included in the title V program submitted for approval an adequate plan or strategy to assure resources to administer the title V program for their GHG-emitting sources at the 100 tpy level.

We note that there is nothing inherently problematic with a title V program submission that did not include the previously-described plan to acquire additional resources. Only title V programs that lack appropriate constraints to limit title V applicability for new pollutants (consistent with Federal law) to match their resources must be narrowed to include such constraints.[10]

3. Basis for Reconsideration and Narrowing of Approval

Based on the previous analysis, it is clear that EPA's approval of the title V programs subject to this action was flawed. They each are structured in a manner that may impose a title V permitting requirement on sources of pollutants newly subject to regulation under the Act without limitations, and yet they do not have a plan for acquiring resources to adequately permit large new categories of sources. As explained previously, the combination of these title V programs' broader applicability to additional stationary sources that emit pollutants newly subject to regulation, and the failure of the approved title V program to plan for adequate resources for that broader applicability—and to ensure that permits could be issued consistent with the requirements for expeditious processing of permit applications—is a flaw in these programs. In short, the title V program applicability provisions and the assurances provided in the State program submission are mismatched and therefore EPA needs to reconsider its approval of these programs. As discussed previously, EPA's recently promulgated GHG rules have highlighted this flaw.

It may be true that at the time the affected States submitted their State programs for approval, the precise course of events that have recently transpired concerning GHGs and that have exposed the mismatch between title V applicability and State assurances may have been difficult to foresee. Even so, it could have been generally foreseen that the breadth of the affected State program applicability provisions, combined with the programs' limited State assurances, was at least a potential mismatch that could eventually lead to title V applicability greatly outstripping permitting authority resources. EPA does not believe it is required to wait for that to occur, and then issue a Notice of Deficiency (NOD), to address the issue. Rather, this is a flaw in the title V programs that provides a basis for EPA to reconsider its approval.

In the proposed Tailoring Rule, EPA proposed to narrow its approval for all approved State programs. EPA now finalizes this narrowing of approval for only the States which have indicated

[10] As stated earlier, States included in this rule are in this situation, or else EPA currently lacks sufficient information to determine that they are not in this situation.

that their title V programs will apply to sources that emit or have the potential to emit at least 100 tpy of GHG as of January 2, 2011, or for which EPA has not been able to clearly establish whether or not the program will apply to such sources. The States for which EPA is narrowing its approval of the approved State title V program in this action include: Alabama, California, Colorado, District of Columbia, Georgia, Hawaii, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virgin Islands, Virginia, Washington, West Virginia, and Wisconsin. For each of these States, EPA is finalizing an amendment to Appendix A of 40 CFR part 70 that will state "For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011." [11] EPA is also finalizing very similar language in the SIPs of Arizona, Minnesota and Wisconsin in order to ensure that the federally approved title V program in each of these States is appropriately narrowed under part 52 as well as part 70. The language being used for this final narrowing rule reflects minor changes from the language proposed in the Tailoring Rule in order to clarify and reflect the decisions about permitting thresholds reached in the final Tailoring Rule.

EPA notes that the following States have stated either that they can permit major sources of GHG in their approved title V program consistent with the Tailoring Rule thresholds or that they have no authority under their current approved title V program to permit sources due to their status as major sources of GHG: Alaska, Arkansas, Arizona, Connecticut, Delaware, Florida, Idaho, Indiana, Kentucky, Massachusetts, Michigan, Montana, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Puerto Rico, Texas, and Wyoming. Accordingly, it is not necessary at present to narrow the title V program approval for these States. As noted previously, EPA intends to work with these States as necessary, through program revisions, notices of deficiency and/or application of the Federal title V program, to assure that major sources of GHGs in all States are subject to title V programs, but only at the Tailoring Rule thresholds.

C. Authority for EPA Action

EPA has determined that this flaw in the approved State programs warrants reconsideration of the prior program approvals, and narrowing of those approvals. EPA believes it may reconsider its prior actions under authority inherent in CAA section 502, with further support from CAA section 301(a), and the reconsideration mechanisms provided under CAA section 307(b) and APA section 553(e).[12] In addition, with respect to the two SIP revisions, EPA has authority to correct errors in SIP approvals, as well as to reconsider them.

In approving the State programs under CAA 502(d), EPA retained authority to revise that action. The courts have found that an administrative agency has the inherent authority to reconsider its decisions, unless Congress specifically proscribes the agency's discretion to do so. *See, e.g., Gun South, Inc.* v. *Brady,* 877 F.2d 858, 862 (11th Cir. 1989) (holding that agencies have implied authority to reconsider and rectify errors even though the applicable statute and regulations do not provide expressly for such reconsideration); *Macktal* v. *Chao,* 286 F.3d 822, 826–26 (5th Cir. 2002); *Trujillo* v. *General Electric Co.,* 621 F.2d 1084, 1086 (10th Cir. 1980) ("Administrative agencies have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider"); *see also New Jersey* v. *EPA,* 517 F.3d 574 (DC Cir. 2008) (holding that an agency normally can change its position and reverse a prior decision but that Congress limited EPA's ability to remove sources from the list of hazardous air pollutant source categories, once listed, by requiring EPA to follow the specific delisting process at CAA section 112(c)(9)).[13]

Section 301(a) of the CAA, in conjunction with CAA section 502 and the case law just described, provides statutory authority for EPA's reconsideration action in this rulemaking. Section 301(a) of the CAA authorizes EPA "to prescribe such regulations as are necessary to carry out [EPA's] functions" under the CAA. Reconsidering prior rulemakings, when necessary, is part of "[EPA's] functions" under the CAA. Cf. CAA section 307(b). Furthermore, the case law previously cited establishes that a grant of authority to approve State title V programs carries with it the inherent right to reconsider that approval, particularly since Congress has not prescribed any specific alternative mechanism for such reconsideration. Thus, CAA sections 502 and 301(a) confer authority upon EPA to undertake this rulemaking.

EPA finds further support for its authority to narrow its approvals in APA section 553(e), which requires EPA to give interested persons "the right to petition for the issuance, amendment, or repeal of a rule," and CAA section 307(b)(1), which expressly contemplates that persons may file a petition for reconsideration under certain circumstances (at the same time that a rule is under judicial review). The right to petition to reconsider, amend, or repeal presumes that an agency has the discretion to grant such a petition. If EPA has the authority to grant a petition from another person to reconsider, amend or repeal a rule if justified under the CAA, then it follows that EPA should be considered as having authority to reconsider, amend or repeal a rule when it determines such an action is justified under the CAA, even without a petition from another person.

EPA recently used its authority to reconsider prior actions and limit its prior approval of a SIP in connection with California conformity SIPs. *See, e.g.,* 68 FR 15720, 15723 (discussing prior action taken to limit approvals); 67 FR 69139 (taking final action to amend prior approvals to limit their duration); 67 FR 46618 (proposing to amend prior approvals to limit their duration, based on CAA sections 110(k) and 301(a)). EPA had previously approved SIPs with emissions budgets based on a mobile source model that was current at the time of EPA's approval. Later, EPA updated the mobile source model. But, even though the model had been updated, emissions budgets would continue to be based on the older, previously approved model in the SIPs, rather than the updated model. To rectify this problem, EPA conducted a rulemaking that revised the previous SIP approvals so that the approvals of

[11] EPA notes that where an approved State program includes multiple permitting authorities, EPA is narrowing the approved State program if any permitting authority requires narrowing.

[12] *See* CAA section 307(d) (omitting title V program approvals from the list of specific types of rulemakings under the CAA not subject to the APA).

[13] For additional case law, *see Belville Mining Co.* V. *United States,* 999 F.2d 989, 997 (6th Cir. 1993); *Dun & Bradstreet Corp.* v. *United States Postal Service,* 946 F.2d 189, 193 (2d Cir. 1991); *Iowa Power & Light Co.* v. *United States,* 712 F.2d 1292 (8th Cir. 1983).

the emissions budgets would expire early, when the new ones were submitted by States and found adequate, rather than when a SIP revision was approved. This helped California more quickly adjust its regulations to incorporate the newer model.

EPA notes that it considered but decided not to use the NOD process, which is explicitly provided for in CAA section 502(i), to address the flaw presented by these program approvals. There are several reasons why EPA determined that it was neither necessary nor appropriate to use the NOD process to address this issue in this rule.

The CAA provides that the NOD is to be used "whenever the Administrator makes a determination that a permitting authority is not adequately administering or enforcing a program" and provides that States must correct the deficiency within 18 months. CAA section 502(i).

Here, the problem is not with the way the State is administering or enforcing its approved State title V program. States are issuing permits, and modifications, and enforcing the various requirements of title V as provided for under the Act. The flaw is the mismatch between the breadth of the applicability provisions and the limited State assurances of adequate resources, in light of the possibility that a very large number of new major sources could become subject to title V. This flaw does not relate at all to the current administration and enforcement of the title V program, but rather to the overbroad nature of the underlying structure and scope of the title V program. The distinction is further underlined by the fact that section 502(i) contemplates that States would need to take corrective action to address the notice of deficiency. However, in the case of the flaw addressed here, EPA believes that no further State action will be necessary to address this mismatch once the approved title V program has been narrowed by this action.[14]

EPA views the NOD as specific authority for addressing specific circumstances, but concludes that it is not the sole means of changing an approved State program, and it is not the appropriate means in these circumstances. EPA believes nothing in section 502(i) displaces its authority to reconsider prior program approvals and, for the reasons described previously in this rule and in the Tailoring Rule proposal, concludes that such a reconsideration and narrowing is warranted and appropriate.

With respect to the two SIPs being revised, EPA is also exercising its authority to correct errors in SIPs, pursuant to CAA section 110(k)(6), as well as its authority to reconsider its actions. Under CAA section 110(k)(6), once EPA determines that its action in approving the PSD SIPs was in error, EPA has the authority to correct the error in an "appropriate" manner, and through the same process as the original approval, but without requiring any further State submission.

EPA's narrowing of its approval of the title V program corrects an error by addressing the flaw previously discussed, that the approved program could, under certain circumstances, sweep in more sources than the permitting authority could process in an expeditious manner in light of the resources that were available or could be made available. EPA believes correcting these SIPs is a reasonable exercise of its authority for the reasons stated herein and for the reasons stated in the PSD Narrowing Rule ("Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans").

V. Comments and Responses

Comments: Several industry commenters (4019, 4118, 4691, 5083, 5140, 5181, 5278, 5317) and one State commenter (4019) generally disagreed with our proposal to narrow our approval of previously-approved title V programs. Specific arguments against the proposed approach include the following:

- The EPA has overstated its authority under CAA section 301(a). The DC Circuit has observed that section 301(a)(1) "does not provide the Administrator with carte blanche authority to promulgate any rules, on any matter relating to the CAA, in any manner that the Administrator wishes." Where the CAA includes express provisions—such as section 110(k)(5) (the SIP call provision)—EPA is required to follow those provisions. (4019, 5083, 5140, 5181, 5278, 5317).
- The EPA's invocation of 5 U.S.C. 553(e) is legally indefensible. The EPA has mentioned no outstanding petition for EPA to revisit its PSD SIP approvals, so section 553(e) appears to be inapposite. Even where section 553(e) applies, it merely directs agencies to allow parties to seek revisions of rules; it plainly does not permit agencies to disregard procedural requirements—whether under the APA or under organic statutes such as the CAA—that agencies must follow in effecting any such revisions. (5317)

An industry commenter (4298) supports EPA's efforts to limit or conform its prior approvals through CAA sections 301(a)(1) and 110(k)(6) with respect to applicability thresholds. However, the commenter believes EPA should take affirmative steps to ensure that States immediately either revise their regulations to raise existing lower thresholds or demonstrate that they have adequate resources and funding to manage their programs utilizing those existing lower thresholds.

The same commenter states that EPA should issue a NOD, under CAA section 502(i)(1), to all States concurrent with the final Tailoring Rule, unless a State can demonstrate that it has commenced and is committed to finalizing any changes necessary under State law to make it consistent with the Tailoring Rule (4298). The commenter adds that EPA should not finalize any action that would trigger GHG permitting until each State program has been amended. Another commenter (5306) suggests EPA establish an expeditious deadline for States to submit corrective program revisions by adopting model guidelines to help inform State rulemaking, and EPA should complete this process by the end of 2010. The commenter explains that EPA can promptly issue a notice of deficiency and call for expeditious corrective action. *See* 42 U.S.C. 7661a(i). (5306).

Several comments state that there is no provision in title V, similar to error correction provisions for SIPs, for EPA to use to correct an error in its original approval of a title V program (5140, 5181, 5278).

Response: As discussed previously, EPA believes that it has authority under sections 502 and 301 to reconsider its approvals of State title V programs and under section 110 to reconsider SIP approvals and correct errors in the SIP. Section 502(d) explicitly requires EPA to approve or disapprove State title V programs, and EPA believes under the case law cited previously, this authority inherently includes the authority for EPA to reconsider its prior approval. EPA is citing CAA 307(b) and APA section 553(e) to indicate that Congress understood that EPA had the authority to reconsider its action in response to a petition. There is no reason to believe that EPA's authority to reconsider its

[14] As noted in the Tailoring Rule, there may be good reasons for States to update their State laws and regulations to reflect the narrowing and the thresholds of the Tailoring Rule, but the States will still have fully approved programs, and once the Federally-approved program is narrowed, the obligation under Federally approved programs to apply for a permit will no longer exist for sources below the Tailoring Rule thresholds.

action is limited solely to situations where a person has filed a petition.[15]

While Congress "undoubtedly can limit an agency's discretion to reverse itself," and "EPA may not construe a statute in a way that completely nullifies textually applicable provisions meant to limit its discretion," *New Jersey* v. *EPA,* 517 F.3d 574, 583 (DC Cir. 2008) (quotation omitted), there is no evidence that Congress limited EPA's discretion to reconsider its decisions with respect to title V program approvals, or that EPA's approach would nullify any provisions intended to limit its discretion. The only provision that commenters have identified as potentially limiting EPA's discretion is section 502(i), but that section is explicitly directed to the administration and enforcement of an approved program. Where there are problems with how an approved program is being implemented, the notice of deficiency process provides an avenue for working with States to fix those problems. Where, however, EPA realizes (as here) that its approval of a program was based on a structural flaw in the program—that is, a mismatch between the scope of sources potentially covered and the resources to cover them—that may cause future problems with administrability, there is no reason to believe that Congress intended to limit EPA's ability to reconsider its decision.

As noted previously, the distinction between current deficiencies in the administration and enforcement of the title V program, as compared to the overbroad nature of the underlying structure and scope of the title V program, is further underlined by the fact that section 502(i) contemplates that States would need to take corrective action to address the notice of deficiency. However, in the case of the flaw addressed here, EPA believes that no further State action will be necessary once the approved title V program has been narrowed by this action.

The conclusion that Congress did not intend to limit EPA's ability to reconsider its decisions is further supported by the fact that (unlike the situation the DC Circuit considered in *New Jersey* v. *EPA,* discussed previously) Congress did not establish any specific substantive limits on EPA's discretion in issuing a notice of deficiency. Rather, EPA is to issue a notice "whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program * * * " Section 502(i)(1). Thus, EPA's decision to reconsider its approval in no way nullifies any provisions meant to limit its discretion.

Finally, the fact that there is no provision similar to section 110(k)(6) for title V provides no basis for concluding that Congress intended to limit EPA's ability to reconsider its approvals. Section 110(k)(6) was enacted in response to a court decision, *Concerned Citizens of Bridesburg* v. *EPA,* 836 F.2d 777 (2d Cir. 1987), where the court narrowly construed EPA's authority to correct errors in SIP approvals as limited to typographical or similar errors. In response, Congress added section 110(k)(6) as part of the 1990 amendments to make clear that EPA has authority to correct any errors. No court has ever suggested that EPA lacks authority to reconsider its decisions to approve title V programs, and under the case law the lack of an explicit mechanism to correct errors in title V program approvals is entirely consistent with EPA's view that such authority is inherent in CAA section 502, as discussed previously.

EPA believes this case law also supports its authority to reconsider the approvals into part 52 of two title V programs which are being narrowed. Furthermore, EPA believes we have authority not only to reconsider these SIP approvals, but also to narrow these SIPs using our error correction authority under CAA section 110(k)(6). EPA disagrees with commenters who believe that this provision may only be used for technical or clerical errors. EPA's view is that Section 110(k)(6) of the CAA is available to correct any error EPA made in approving a SIP. The text of CAA section 110(k)(6) applies the provision broadly to any mistake, and does not limit the provision's applicability to only technical or clerical errors. Congress's passage of CAA section 110(k)(6) in 1990 in fact indicated Congress's intent to reinforce EPA's broad authority to unilaterally correct any errors in SIP approvals, coming as it did after the Third Circuit adopted a narrow interpretation of error correction authority in *Concerned Citizens of Bridesburg* v. *U.S. EPA,* 836 F.2d 777 (1987).[16]

EPA notes that the question of whether EPA should have postponed promulgation of the Vehicle Rule until each State title V program had been revised is not germane to this rule, and EPA is not, in this rule, reopening any issue as to the timing of its promulgation of the Vehicle Rule. Nonetheless, EPA had compelling reasons to issue the Vehicle Rule at the time it did so. In the Vehicle Rule, EPA explained that although it has some discretion with respect to the timing of standards, our discretion was not unlimited, and that three years had already passed since the Supreme Court had directed EPA to take appropriate actions under CAA section 202(a). 75 FR 25402. EPA explained further that any additional delay in setting standards would frustrate implementation of the national program for regulation of motor vehicles, resulting in substantial prejudice to vehicle manufacturers and consumers. 75 FR 25326. EPA also explained that consideration of indirect stationary source costs has no relevance to the issue of the appropriate level at which to set vehicle emission standards. Vehicle Rule RTC 5–456.

As noted previously, once the Federally-approved program is narrowed, the obligation under Federally approved programs to apply for a permit will no longer exist for sources below the Tailoring Rule thresholds. Further, EPA notes that the Agency has no authority to amend State law, but the majority of States have informed EPA that they are revising their State programs to incorporate the thresholds in the final Tailoring Rule for GHG-emitting sources. Indeed, many programs report that these changes will be in place by January 2, 2011. Other programs report that their changes will be implemented by the spring of 2011, which should be timely for State law purposes in light of the fact that sources newly subject to title V generally have up to a year to file their application.

EPA is continuing to work with States to implement the final Tailoring Rule and title V permitting for GHG sources. EPA intends to use program revisions, notices of deficiency and/or application of the Federal title V program, as appropriate, in order to assure that GHG sources in all States are subject to title V programs (and that those programs are not overwhelmed by permitting sources below the Tailoring Rule thresholds). EPA reiterates that once the Federally-approved program is narrowed (in this action), the obligation under Federally approved programs to apply for a permit will no longer exist for sources below the Tailoring Rule thresholds. EPA reiterates further that this approach is preferable to the NOD process for States subject to this action and that it is not necessary to issue notices of deficiency as part of this rulemaking.

[15] We further note that it is not clear the comment challenging the citation of section 553(e) in the absence of a petition was intended to reference title V.

[16] For further discussion of SIP-related issues, see the PSD Narrowing Rule, particularly section V.A ("Comments Regarding the Legal Mechanism for the Current Action").

VI. Effective Date

This rule is being issued under CAA § 307(d)(1)(V). CAA section 307(d) specifies that rules issued under its provisions are not subject to APA section 553. Thus, the 30-day delay in effective date from the date of signature required under the APA does not apply. In addition, APA section 553(d) provides exceptions to this requirement for good cause and for any action that grants or recognizes an exemption or relieves a restriction. The effect of this rule is to relieve many small sources (and permitting authorities) from permitting obligations under title V and to address the potential for permitting authorities to be overwhelmed by processing permits not required under 40 CFR part 70. Therefore, EPA finds that there is good cause for an immediate effective date, and that an immediate effective date is consistent with the purposes underlying APA section 553(d). In addition, since this is not a major rule under the Congressional Review Act (CRA), the 60-day delay in effective date required for major rules under the CRA does not apply. This rule is thus effective upon publication.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Instead, this will significantly reduce costs incurred by sources and permitting authorities relative to the costs that would be incurred if EPA did not revise this rule. In the final Tailoring Rule, EPA stated that based on its GHG threshold data analysis, it estimated that over 6 million new facilities nationally would be required to obtain operating permits based on applying an emissions threshold for major source status of 100 tpy of GHG emissions on a mass basis. This was compared with the approximately 15,000 title V permits that have been issued to date. Thus, without the final Tailoring Rule, the administrative burden for permitting GHG emissions would increase 400-fold, an unmanageable increase. The current action takes further steps to implement the burden-reduction implemented by the final Tailoring Rule by raising the GHG thresholds in the approvals of the title V programs of the identified State and local agencies from 100 tpy to the higher thresholds required under the final Tailoring Rule (100,000 tpy CO2e under title V during step 2 of the final Tailoring Rule implementation). However, OMB has previously approved the information collection requirements contained in the existing regulations under 40 CFR part 70 under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0336. 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 Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In making such determinations, the impact of concern is any significant adverse economic impact on small entities (5 U.S.C. 603 and 604). This rule will relieve Federal regulatory burdens for affected small entities, including small businesses that are subject to title V permitting in the affected States by raising the GHG applicability thresholds in those States to the levels specified in the final Tailoring Rule, which in turn, will result that fewer sources being subject to title V permitting in those States. Thus, the program changes provided by this rule will not result in a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. The action is merely an administrative action designed to ensure consistency with the requirements of the final Tailoring Rule. This action does not require any State or local permitting agency or private entity to take on any new regulatory burdens; any burden resulting from changing State or local GHG thresholds was already accounted for in the final Tailoring Rule, which already imposes the higher GHG thresholds addressed by this action. Thus, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule is expected to result in cost savings and administrative burden reduction for affected permitting agencies and sources in the affect States, including governments.

E. Executive Order 13132—Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely seeks to reduce the number of sources subject to title V permitting in the affected States by raising the GHG thresholds in those States to the levels specified in the final Tailoring Rule, resulting in a significant reduction in burdens for affected State and local agencies. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed action from State and local officials.

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

Subject to Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement.

EPA has concluded that this action may have Tribal implications. However, it will neither impose substantial direct compliance costs on Tribal government, nor preempt Tribal law. There are no Tribal authorities with an EPA-approved part 70 title V permitting program to date;[17] however, this may change in the future.

EPA consulted with Tribal officials early in the process of developing the final Tailoring Rule, which the current rule helps to implement, to allow them to have meaningful and timely input into its development. EPA specifically solicited comments from Tribal officials on the proposal for this approach to narrowing title V program approvals, which was part of the GHG Tailoring Rule proposal (74 FR 55292, October 27, 2009). EPA consulted with Tribal officials early in the regulatory development process for the GHG Tailoring Rule, including by publishing an Advanced Notice of Proposed Rulemaking (73 FR 44354, July 30, 2009), where we received several comments from Tribal officials which were considered in the proposed and final rules.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects because it does 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 EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, 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 (EO) 12898 (59 FR 7629 (Feb. 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.

EPA has concluded that it is not practicable to determine whether there would be disproportionately high and adverse human health or environmental effects on minority and/or low income populations from this rule. This rule is necessary in order to allow for the continued implementation of permitting requirements established in the Clean Air Act. Specifically, without this rule, the affected States' CAA title V permitting programs would become overwhelmed and unmanageable by the untenable number of GHG sources that would become newly subject to them. This would result in severe impairment of the functioning of these programs with potentially adverse human health and environmental effects nationwide. Under this rule and the findings under the final Tailoring Rule, EPA is ensuring that the affected States' CAA permitting programs continue to operate by limiting their applicability to the maximum number of sources the programs can possibly handle. This approach is consistent with congressional intent as it phases in applicability, starting with the largest sources initially, and then other sources over time, so as not to overwhelm State permitting programs. By doing so, this rule allows for the maximum degree of environmental protection possible while providing regulatory relief for the unmanageable burden that would otherwise exist. Therefore, we believe it is not practicable to identify and address disproportionately high and adverse human health or environmental effects on minority populations and low income populations in the United States under this final rule, though we do believe that this rule will ensure that States can continue to issue title V permits to significant sources of air pollution.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective December 30, 2010.

L. Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by February 28, 2011.

[17] One Tribe is operating a title V permit program pursuant to a delegation under part 71.

Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements. Pursuant to section 307(d)(1)(V) of the Act, the Administrator determines that this action is subject 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." This action finalizes some, but not all, elements of a previous proposed action—the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Proposed Rule (74 FR 55292, October 27, 2009).

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have jurisdiction for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

This rule narrowing approvals of title V programs is "nationally applicable" within the meaning of section 307(b)(1). This rule narrows the approval of most approved title V programs across the country. At the core of this rulemaking is EPA's interpretation of its authority to reconsider its prior approvals under the Clean Air Act, and its application of that interpretation to areas across the country. EPA is finalizing this rule with a goal of ensuring that no State will become unable to implement national Clean Air Act requirements, including those for permitting sources of greenhouse gases. This action is being taken on the basis of a single administrative record. The factual questions in this rule are not unique to particular geographical areas, but are asked uniformly of all States. The large number of States, spanning much of the country, being affected, the common core of knowledge and analysis involved in formulating the rule, and the common legal interpretation advanced of section 502 and other sections of the Clean Air Act, all combine to make this a nationally applicable rule.

For the same reasons, the Administrator also is finding that this action is based on determinations of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because, in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of "nationwide scope or effect" would be appropriate for any action that has a scope or effect beyond a single judicial circuit. H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this rulemaking extends to numerous judicial circuits since most approved title V programs across the country are affected by this action. EPA also applied a consistent analytical approach broadly across the country to determine which action to take, and for which States. EPA used a nationally applicable, uniform legal interpretation of section 502 and other sections of the Clean Air Act and of EPA's general authority in conducting this analysis. In these circumstances under section 307(b)(1), the Administrator is finding the rule to be based on determinations of "nationwide scope or effect" and for jurisdiction to be in the DC Circuit.

Thus, any petitions for review of the narrowing of title V program approvals must be filed in the Court of Appeals for the District of Columbia Circuit by February 28, 2011.

Statutory Authority

The statutory authority for this action is provided by sections 110, 301 and 502 of the CAA as amended (42 U.S.C. 7410, 7601 and 7661a). This action is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects

40 CFR Part 52

Administrative practice and procedure, Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Environmental protection, 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.

Dated: December 23, 2010.

Lisa P. Jackson,

Administrator.

■ For reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth in the following.

PART 52—[AMENDED]

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

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

■ 2. Section 52.151 is added to subpart D to read as follows:

§ 52.151 Operating permits.

Insofar as the permitting threshold provisions in the Pinal County Code of Regulations for the Pinal County Air Quality Control District concern the treatment of sources of greenhouse gas emissions as major sources for purposes of title V operating permits, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2 equivalent emissions, as well as 100 tpy on a mass basis, as of July 1, 2011.

■ 3. Section 52.1233 is revised by redesignating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 52.1233 Operating permits.

* * * * *

(b) For any permitting program located in the State, insofar as the permitting threshold provisions in Chapter 7007 rules concern the treatment of sources of greenhouse gas emissions as major sources for purposes of title V operating permits, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2 equivalent emissions, as well as 100 tpy on a mass basis, as of July 1, 2011.

■ 4. Section 52.2590 is added to subpart YY to read as follows:

§ 52.2590 Operating permits.

For any permitting program located in the State, insofar as the permitting

threshold provisions in Chapter NR 407 of the Wisconsin Administrative Code concern the treatment of sources of greenhouse gas emissions as major sources for purposes of title V operating permits, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2 equivalent emissions, as well as 100 tpy on a mass basis, as of July 1, 2011.

PART 70—[AMENDED]

■ 5. The authority citation for part 70 continues to read as follows:

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

■ 6. Appendix A to Part 70 is amended as follows:
■ a. By adding paragraph (d) under Alabama; and
■ b. By adding paragraph (jj) under California;
■ c. By adding paragraph (c) under Colorado;
■ d. By adding paragraph (d) under District of Columbia;
■ e. By adding paragraph (c) under Georgia;
■ f. By adding paragraph (d) under Hawaii;
■ g. By adding paragraph (c)under Illinois;
■ h. By adding paragraph (m) under Iowa;
■ i. By adding paragraph (e) under Kansas;
■ j. By adding paragraph (c) under Louisiana;
■ k. By adding paragraph (c) under Maine;
■ l. By adding paragraph (d) under Maryland;
■ m. By adding paragraph (d) under Minnesota;
■ n. By adding paragraph (c) under Mississippi;
■ o. By adding paragraph (x) under Missouri;
■ p. By adding paragraph (k) under Nebraska, City of Omaha; Lincoln-Lancaster County Health Department;
■ q. By adding paragraph (d) under Nevada;
■ r. By adding paragraph (c) under New Hampshire;
■ s. By adding paragraph (e) under New York;
■ t. By adding paragraph (d) under Ohio;
■ u. By adding paragraph (c) under Oklahoma;
■ v. By adding paragraph (c) under Pennsylvania;
■ w. By adding paragraph (c) under Rhode Island;
■ x. By adding paragraph (c) under South Carolina;
■ y. By adding paragraph (c) under South Dakota;
■ z. By adding paragraph (f) under Tennessee;
■ aa. By adding paragraph (c) under Utah;
■ bb. By adding paragraph (c) under Vermont;
■ cc. By adding paragraph (c) under Virgin Islands;
■ dd. By adding paragraph (c) under Virginia;
■ ee. By adding paragraph (j) under Washington;
■ ff. By adding paragraph (f) under West Virginia; and
■ gg. By adding paragraph (c) under Wisconsin.

Additions to the Appendix are set out to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Alabama

* * * * *

(d) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

* * * * *

California

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(jj) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

Colorado

* * * * *

(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

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District of Columbia

* * * * *

(d) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

Georgia

* * * * *

(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

Hawaii

* * * * *

(d) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

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Illinois

* * * * *

(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

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Iowa

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(m) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

Kansas

* * * * *

(e) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

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Louisiana

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(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

Maine

* * * * *

(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

Maryland

* * * * *

(d) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

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Minnesota

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(d) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

Mississippi

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(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

Missouri

* * * * *

(x) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

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Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

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(k) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

Nevada

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(d) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

New Hampshire

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(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

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New York

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(e) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

* * * * *

Ohio

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(d) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

Oklahoma

* * * * *

(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

* * * * *

Pennsylvania

* * * * *

(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

* * * * *

Rhode Island

* * * * *

(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

South Carolina

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(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

South Dakota

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(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

Tennessee

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(f) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

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Utah

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(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

Vermont

* * * * *

(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

Virgin Islands

* * * * *

(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

Virginia

* * * * *

(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

Washington

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(j) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

West Virginia

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(f) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

Wisconsin

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(c) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO_2e, as well as 100 tpy on a mass basis, as of July 1, 2011.

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[FR Doc. 2010–32757 Filed 12–29–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R04–OAR–2010–0392(a); FRL–9246–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; State of Florida; Control of Large Municipal Waste Combustor (LMWC) Emissions From Existing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; notice of administrative change.

SUMMARY: EPA is approving the Clean Air Act (CAA) section 111(d)/129 State Plan (the Plan) submitted by the Florida Department of Environmental Protection (FDEP) for the State of Florida on July 12, 2007, for implementing and enforcing the Emissions Guidelines (EGs) applicable to existing Large Municipal Waste Combustors (LMWCs). These EGs apply to municipal waste combustors with a capacity to combust more than 250 tons per day of municipal solid waste (MSW).

DATES: This direct final rule is effective February 28, 2011 without further notice, unless EPA receives adverse comment by January 31, 2011. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R04–OAR–2010–0392 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: garver.daniel@epa.gov.*
3. *Fax:* (404) 562–9095.
4. *Mail:* EPA–R04 OAR–2010–0392, Daniel Garver, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303.
5. *Hand Delivery or Courier:* Mr. Daniel Garver, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 am to 4:30 pm, excluding federal holidays.

Instructions: Direct your comments to Docket ID Number EPA–R04–OAR–2010–0392. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on