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Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2009–0517; FRL–9244–9]

RIN 2060–AQ62

Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This action is another in a series of steps EPA is taking to implement the Prevention of Significant Deterioration (PSD) program for greenhouse gas (GHG)-emitting sources. EPA is finalizing its proposed rulemaking to narrow its previous approval of State Implementation Plan (SIP) PSD programs in 24 states that apply to GHG-emitting sources. Specifically, EPA is withdrawing its previous approval of those programs to the extent they apply PSD to GHG-emitting sources below the thresholds in the final Tailoring Rule, which EPA promulgated by **Federal Register** notice dated June 3, 2010. Having narrowed its prior approval, EPA asks that each affected state withdraw from EPA consideration the part of its SIP that is no longer approved. The states for whose SIPs EPA is narrowing approval are: Alabama, California, Colorado, Georgia, Indiana, Iowa, Louisiana, Maine, Maryland, Mississippi, Missouri, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, and Wisconsin.

DATES: This action is effective on December 30, 2010.

ADDRESSES: EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2009–0517. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *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. Michael S. Brooks, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–01), Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–3539; *fax number:* (919) 541–5509; *e-mail address: brooks.michaels@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 Anderson, Chief, Permits and Technical Assessment Branch, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–2173.	District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, and West Virginia.
IV	Lynorae Benjamin Chief, Regulatory Development Section, Air, Pesticides and Toxics Management Division, EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303–3104, (404) 562–9040.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
V	J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 886–1430.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
VI	Jeff Robinson, Chief, Air Permits Section, EPA Region 6, Fountain Place 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6435.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
VII	Mark Smith, Chief, Air Permitting and Compliance Branch, EPA Region 7, 901 North 5th Street, Kansas City, KS 66101, (913) 551–7876.	Iowa, Kansas, Missouri, and Nebraska.
VIII	Carl Daly, Unit Leader, Air Permitting, Monitoring & Modeling Unit, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6416.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
IX	Gerardo Rios, Chief, Permits Office, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3974.	Arizona, California, Hawaii and the Pacific Islands, Indian Country within Region 9 and Navajo Nation, and Nevada.
X	Nancy Helm, Manager, Federal and Delegated Air Programs Unit, EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101, (206) 553–6908.	Alaska, Idaho, Oregon, and Washington.

I. General Information

A. Does this action apply to me?

Entities potentially affected by this rule include states, local permitting authorities, and tribal authorities.

Entities potentially affected by this rule also include sources in all industry groups, which have a direct obligation under the Clean Air Act (CAA) to obtain a PSD permit for GHGs for projects 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.
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:

Outline

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. Action
B. Legal Basis
C. Legal Mechanisms for EPA Action
V. Comments and Responses
A. Comments Regarding the Legal Mechanism for the Current Action
B. Comments on Potential Triggering of Anti-Backsliding Provisions
C. Comments on Persisting Practical Difficulties at the State Level
D. Comments on Preferred Alternative Courses of Action
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
VIII. Statutory Language

II. Overview of the Final Rule

This action finalizes EPA's proposal to narrow the approval of SIPs 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. The Tailoring Rule, which followed a series of actions by EPA that will trigger PSD applicability to GHG-emitting sources as of January 2, 2011, limits PSD applicability for GHG emissions to larger sources.

The Tailoring Rule accomplished this purpose by setting thresholds at which GHG emissions become subject to regulation for PSD and Title V purposes.[1] Under the Tailoring Rule, a source becomes subject to PSD requirements based on its GHG emissions only if it both emits GHGs at or above the Tailoring Rule thresholds,[2] which are calculated on a carbon dioxide equivalent (CO_2e) basis; and it emits GHGs at levels above the statutory 100/250 tons per year (tpy) mass-based threshold generally applicable to all PSD-regulated pollutants, and—if it is being modified—has or will have an emission increase on a mass basis. The Tailoring Rule thresholds were designed to relieve the overwhelming administrative burdens and costs associated with the dramatic increase in permitting burden that would have resulted from applying PSD at the statutory levels on January 2, 2011. Instead, the Tailoring rule established a phasing in of applicability for GHG sources, starting with the largest GHG emitters.

However, in proposing the Tailoring Rule, EPA recognized that even after it finalized the Tailoring Rule, most of the SIPs with approved PSD programs would—until they were revised—

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

[2] The Tailoring Rule thresholds establish applicability of the PSD permitting program to GHG-emitting sources only if they emit GHG in amounts above the 75,000/100,000 tpy CO_2e.

continue to apply PSD at the statutory thresholds, even though the states would not have sufficient resources to implement the PSD program at those levels. Accordingly, the proposed Tailoring Rule included a proposal to narrow EPA's previous approval of SIPs such that the SIPs would only apply to GHG emissions at or above the higher thresholds established in the Tailoring Rule. When EPA finalized the Tailoring Rule, EPA did not, however, 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. EPA is now finalizing that part of the Tailoring Rule proposal in 24 states.

Thus, in this action, EPA is narrowing its previous approval of those approved PSD SIP programs that apply PSD to GHG-emitting sources. Specifically, EPA is withdrawing their previous approvals of those programs to the extent the SIPs apply PSD to increases in GHG emissions from GHG-emitting sources with emissions below the Tailoring Rule thresholds. The portions of the PSD programs regulating GHGs from GHG-emitting sources with emissions at or above the Tailoring Rule thresholds remain approved.

The effect of EPA narrowing its approval in this manner is that the provisions of previously approved SIPs that apply PSD to GHG emissions increases from sources emitting GHGs below the Tailoring Rule thresholds will have the status of having been submitted by the state but not yet acted upon by EPA. EPA suggests that affected states take one of two actions to withdraw these no-longer-approved SIP PSD provisions. The state may submit a SIP revision for EPA's approval that incorporates the Tailoring Rule thresholds into the SIP. EPA will treat the approval of such a submission as removing these no-longer-approved provisions. Or, a state may submit a letter to EPA stating that it is withdrawing these provisions from EPA's consideration. For any state that takes neither of these actions, EPA intends to propose to disapprove those provisions. The disapproval, if finalized, will not result in the need to resubmit another SIP revision, sanctions, or a federal implementation plan (FIP). This is because the provisions of the SIP that would be disapproved are not required for any purpose under the CAA or necessary to meet any CAA standard.

This action ensures that the federal law applicable in the affected states does not require PSD permitting for GHG emissions below the final Tailoring Rule thresholds as of January 2, 2011. Once the states take action to amend their state laws, then sources in the affected states will not be subject to federal or state requirements to obtain permits at the lower 100/250 tpy level. Most, if not all, of the affected states have already begun taking steps toward completing these changes at the state level, and plan to complete changes to their state law and make those changes effective by January 2, 2011. In general, these states are now in the process of (or have recently completed) incorporating the state law changes into SIP revisions to submit to EPA for approval. The combination of this rule and state actions will, in the affected states, eliminate, or at least greatly minimize, the time during which GHG-emitting sources that are below the Tailoring Rule thresholds will be subject to PSD in the state under either state or federal law while SIP revisions are being developed, submitted, and approved.

The states for whose SIPs EPA is narrowing approval are: Alabama, California,[3] Colorado, Georgia, Indiana, Iowa, Louisiana, Maine, Maryland, Mississippi, Missouri, New Hampshire, New Mexico,[4] North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, and Wisconsin.

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.

Under the CAA PSD program, major stationary sources must obtain a permit prior to undertaking construction or modification projects that would result in specified amounts of new or increased emissions of air pollutants that are subject to regulation under other provisions of the CAA. CAA sections 165(a)(1), 169(1). The permit must, among other things, include emission limitations associated with the best available control technology (BACT). CAA section 165(a)(4).

In recent months, EPA completed four distinct actions related to greenhouse gases under the Clean Air Act. These actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which we issued in a single final action,[5] the "Johnson Memo Reconsideration (also called the "Timing Decision")," [6] the "Light-Duty Vehicle Rule (LDVR)," [7] and the "Tailoring Rule." [8] In the Endangerment Finding, which is governed by CAA § 202(a), the Administrator exercised her judgment, 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 at 66,496. 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 greenhouse gases for new motor vehicles built for model years 2012–2016. 75 FR 25,324. The other two actions, the Johnson Memo Reconsideration 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 greenhouse gases due to the Vehicle Rule establishing the first controls for greenhouse gases under the Act. More specifically, the Johnson Memo Reconsideration provided EPA's interpretation of a pre-existing definition in its PSD regulations delineating the "pollutants" that are taken into account in determining whether a source must obtain a PSD permit and the pollutants each permit must control. Regarding the Vehicle Rule, the Johnson Memo Reconsideration stated that such regulations, when they take effect on January 2, 2011, will, by operation of the applicable CAA requirements, subject GHG-emitting sources to PSD

[3] Specifically, EPA is narrowing its approval of the SIPs for 3 districts within California: Mendocino County, North Coast Unified, and Northern Sonoma County.

[4] EPA is narrowing its approval of both the SIP for New Mexico, as well as the SIP for Albuquerque.

[5] "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66,496 (December 15, 2009).

[6] "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17,004 (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.

[7] "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25,324 (May 7, 2010).

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

requirements. 75 FR 17,004. The Tailoring Rule established a series of steps by which PSD and Title V permit requirements for greenhouse gases are phased in, starting with the largest sources of greenhouse gas emissions. 75 FR 31,514. In addition, by **Federal Register** notice dated September 2, 2010, EPA proposed to find that the SIPs for 13 states with approved PSD programs are substantially inadequate to meet CAA requirements because they fail to apply their PSD program to GHG-emitting sources, and EPA proposed to issue a "SIP call" under CAA section 110(k)(5) for those states that would require submission of a corrective SIP revision. 75 FR 53,892. At the same time, EPA proposed a FIP, under CAA § 110(c), for those states. 75 FR 53,883.

In the proposed Tailoring Rule, EPA proposed a major stationary source threshold of 25,000 tpy for GHG on a CO_2e basis, for at least a specified period. EPA recognized that even so, many SIPs with approved PSD programs would require PSD permitting of GHG-emitting sources at the 100/250 tpy statutory major source threshold generally applicable to regulated New Source Review (NSR) pollutants, as well as at the "any increase" level for modifications, and that these SIPs would remain in place even after we finalized the Tailoring Rule. Thus, in those states, until states revised those SIPs, sources would remain subject to these thresholds as a matter of both state and federal law even after we finalized the Tailoring Rule. This would result in the same problems of overwhelming administrative burdens and costs that we designed the Tailoring Rule to address.

EPA also recognized that the solution to these problems lay in the form of SIP revisions that EPA would approve to raise the thresholds in approved state PSD permitting programs to conform to the Tailoring Rule (or, in the alternative, in the form of increased state resources).

Until the states could develop and submit for approval such SIP revisions, and EPA could approve them, EPA proposed to narrow its approval of the existing EPA-approved SIPs that would regulate GHG emissions at levels below the Tailoring Rule thresholds. Specifically, EPA proposed to narrow its approval of the permitting threshold provisions, including the significance threshold provisions in the SIPs, to the extent those provisions required PSD permits for sources whose GHG emissions fall below the proposed Tailoring Rule thresholds. EPA based its proposed narrowing of approval on the fact that while the SIPs would require PSD to apply at the 100/250 tpy levels (and at the any mass increase level for modifications), the states do not have the resources to implement the program at that level, and thus the SIPs were inconsistent with CAA section 110(a)(2)(E)(i), which requires that states provide necessary assurances that they have adequate funding and personnel to implement their SIPs. EPA proposed to rely, as the legal mechanisms for the proposed narrowing of approval, on CAA section 301(a), which provides the EPA Administrator with general regulatory authority to issue regulations necessary to carry out her CAA functions; and on the authority of an agency to reconsider its actions inherent in the Administrative Procedures Act (APA) section 553. In the alternative, EPA proposed to rely on the error correction provision of CAA section 110(k)(6). EPA did not propose to issue a SIP call under CAA section 110(k)(5) for these SIP provisions.

In the final Tailoring Rule, EPA established a schedule to phase-in threshold levels of GHG emissions below which a source will not be required to obtain a PSD permit.[9] EPA established the initial levels (which are higher than those in the proposed Tailoring Rule) in the first two steps of the phase-in schedule, committed the agency to take future steps addressing smaller sources, and excluded the smallest sources from PSD permitting for GHG emissions until at least April 30, 2016.

In addition, in the final Tailoring Rule, EPA chose revision of the definition of the term "subject to regulation" as the mechanism to revise the PSD thresholds for GHG. Under the PSD program, a major stationary source is subject to PSD. A major stationary source is defined as a source that emits 100/250 tpy on a mass basis of a regulated NSR pollutant, and a regulated NSR pollutant, in turn, is defined as, among other things, a pollutant that is subject to regulation under the CAA. In the final Tailoring Rule, EPA defined the term "subject to regulation" so that GHG emissions from sources at or above specified thresholds (depending on the circumstances, 75,000 and/or 100,000 tpy on a CO_2e basis) are treated as subject to regulation. Thus, sources that emit that amount are subject to PSD as long as that amount of GHG also exceeds 100/250 tpy on a mass basis and with respect to modifications there is a defined emissions increase.[10]

Some states advised EPA that it is likely they would be able to implement the Tailoring Rule thresholds by interpreting the term "subject to regulation" in their SIPs. A state's implementation of the Tailoring Rule in this manner, or in any other manner, prior to January 2, 2011, obviates the need for EPA to narrow its approval of the state's SIP. Thus, in the final Tailoring Rule, EPA delayed final action on its proposal to narrow approval for any SIP-approved PSD programs. EPA deferred making any decision regarding whether to narrow its approval of any SIPs until after learning the process and time-line for states to implement the Tailoring Rule. Based on information it had received, EPA expected that many states would quickly adopt the interpretation of the term "subject to regulation" used in the final Tailoring Rule, and thereby obviate the need for EPA to narrow its approval or take any other action with respect to the SIP. Thus, 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 SIPs.

Almost all states submitted 60-day letters. The letters, in conjunction with other information EPA received, indicate that the states, localities, and other jurisdictions may be divided into three categories. The first, which includes 7 states, 35 subsections of states, the District of Columbia, American Samoa, Guam, Puerto Rico, the U.S. Virgin Islands, and Indian Territory, does not have an approved SIP PSD permitting program. Instead, federal requirements apply. Thus, in these jurisdictions, the thresholds in the Tailoring Rule will apply without further action.

The second category includes the states (or districts within states) whose SIPs do not appear to apply the PSD program to GHG-emitting sources. As a result, EPA proposed a SIP call and FIP for these states by notice dated September 2, 2010. 75 FR 53892. Based on the 60-day letters, letters EPA received in response to the proposed SIP call and FIP (which we refer to as

[9] The final Tailoring Rule also established a threshold of 100,000 tpy CO_2e for when a source would be considered a "major source" subject to title V permitting under 40 CFR part 70 and part 71. This rule addresses issues related to adoption of the Tailoring Rule thresholds for state PSD programs only. EPA will promulgate a separate rule to address issues related to the adoption of the Tailoring Rule threshold for approved state operating permit programs. EPA notes, however, that some state title V programs are incorporated into SIPs and that further corrections of the SIP may be necessary in such cases.

[10] Unlike the proposed Tailoring Rule, the final Tailoring Rule did not set significance levels for GHG emissions.

the 30-day letters), and additional information EPA has received, EPA finalized (at about the same time as this action) a SIP call in 13 states, including 4 districts within states.

The remaining 30 states and 6 districts within states, the third category, have approved SIPs that apply their PSD program to GHG-emitting sources. In those states, absent further action, sources emitting GHGs at or above the 100/250 tpy levels will be subject to PSD requirements as of January 2, 2011, if they construct or modify. Of these localities, 6 states and 4 districts within states have indicated that they would interpret their SIPs to regulate GHG emissions only above the Tailoring Rule thresholds, and no further action was needed to do so. EPA approved a SIP for 1 state—New York—for the first time in November 2010, and that original approval itself was limited to exclude the part of the PSD program that applies to GHG emissions below the Tailoring Rule thresholds. All or part of twenty-four states, including 4 districts, indicated that they would need to submit SIP revisions to EPA in order to incorporate the Tailoring Rule thresholds. Some of these states indicated, however, that they would not be able to complete these changes prior to January 2, 2011. Some states have completed their SIP revisions and submitted them to EPA, and EPA expects to take final action on them promptly. EPA has only signed SIP revision approvals for two states, Alabama and Mississippi, though neither of these approvals has yet been published as of the signing of this rule. These states—including those that have indicated that they would submit SIP revisions to EPA to incorporate the Tailoring Rule thresholds, but for which EPA has not approved such SIP revision as of the date of this rule—are included in this rule.

It should be noted that this rule focuses on eliminating the PSD obligations under federal law for sources below the Tailoring Rule thresholds in states in the third category, those with approved SIPs that do not incorporate the Tailoring Rule. The sources in those states also have permitting obligations under state law. EPA has strongly encouraged states to eliminate the state law obligations by revising their state law as promptly as possible. Such a revision to state law can eliminate those sources' state obligations, even before the state is able to process the revision as a SIP revision and submit it to EPA for approval. In almost all cases, states are proceeding to revise their state law to reflect the Tailoring Rule thresholds and will have done so by January 2, 2011, or very soon thereafter.

In their 60-day letters, none of the states indicated either that they intended to regulate GHG-emitting sources at a level below the Tailoring Rule thresholds, or that they could or would increase their permitting resources to do so.

IV. Final Rule

A. Action

EPA is taking final action to narrow its approval of the SIPs for certain states. In the final Tailoring Rule, EPA established levels of GHG emissions below which PSD provisions do not apply. However, some SIPs currently apply the PSD program to a source that emits GHGs below the Tailoring Rule thresholds, at levels at which, under the Tailoring Rule, GHGs are not a pollutant "subject to regulation" under the CAA, so that the emitting source is not a major stationary source subject to PSD on account of its GHG emissions. Thus, EPA is now narrowing its approval of some approved SIPs so that the PSD programs under those SIPs are approved to apply to GHG-emitting sources only if those sources emit GHGs at or above Tailoring Rule thresholds. EPA is accomplishing this narrowing by withdrawing its previous approval of those PSD programs to the extent they apply to GHG-emitting sources that emit below the Tailoring Rule thresholds.

Those provisions of SIPs from which EPA is withdrawing its approval will be treated as submitted by the state for approval and not yet acted upon by EPA. If a state submits a SIP revision for EPA's approval that incorporates the Tailoring Rule thresholds into the SIP, EPA will treat the approval of the submission as removing these no-longer-approved provisions. We note that once SIP revisions incorporating the Tailoring Rule thresholds are approved after the issuance of this rule, they will supersede the changes made in this rule. That is, this rule amends the regulatory language in the Code of Federal Regulations (CFR) approving each of the relevant SIPs. When EPA approves a SIP revision, EPA will remove from the CFR the regulatory language added by this rule.

Alternatively, EPA suggests that the affected states may withdraw those provisions from EPA's consideration through a letter to the EPA Regional Administrator. EPA offers the following as model language that the state should feel free to use, but is not required to use:

In its final rule entitled "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans" and published on [DATE OF PUBLICATION IN THE FEDERAL REGISTER], EPA amended the Code of Federal Regulations at [LOCATION OF CFR AMENDMENT RELEVANT TO STATE/DISTRICT] and withdrew EPA's approval of that portion of [STATE]'s SIP that would require sources to seek PSD permitting for emissions of GHGs in amounts below the thresholds specified in the Tailoring Rule, 74 FR 55292 (October 27, 2009). [STATE] now acts to withdraw from EPA's consideration that portion of [STATE]'s SIP from which EPA withdrew its approval in that action. These provisions are no longer intended for inclusion in the SIP, and are no longer before EPA for its approval or disapproval.

If a state does not withdraw the SIP provisions for which EPA is rescinding approval, and does not submit a SIP revision incorporating the Tailoring Rule thresholds that would supercede this rule, EPA intends to propose to disapprove the relevant provisions in the near future. Any disapproval of such SIP provisions—again, those applying PSD to GHG-emitting sources that emit GHGs below the Tailoring Rule threshold—will not, if finalized, result in the need to resubmit another SIP revision, in sanctions, or in a FIP. This is because the relevant provisions are not necessary to meet any applicable CAA requirement. *See* CAA sections 110(k)(3) (requirements for SIP disapproval), 179(a)(2) (sanctions).

In the proposed Tailoring Rule, EPA proposed to narrow its approval for all 50 states, as well as the District of Columbia, Guam, Puerto Rico, the U.S. Virgin Islands, and American Samoa. EPA now finalizes this narrowing of approval for only the SIPs with PSD programs that will apply to GHG emissions as of January 2, 2011, and for which the states have not either said that they interpret their SIPs to incorporate the Tailoring Rule thresholds for GHG emissions without the need for further action, or completed taking any further action necessary to incorporate the Tailoring Rule thresholds. This rule does not include final action on the proposal to narrow EPA's approval of SIPs for states that do not have approved PSD SIP programs (the first category previously described), and states that have approved PSD SIP programs that do not apply to GHGs (the second category previously described). This rule also does not take final action on the proposal to narrow EPA's approval of SIPs for states that have PSD SIP programs that cover GHG emissions, and that have already incorporated the Tailoring Rule thresholds via interpretation, SIP revision, or any other mechanism. The language being used

for this final narrowing rule reflects 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.

The states for whom EPA is narrowing its approval of the SIP PSD program in this action include: Alabama, California, Colorado, Georgia, Indiana, Iowa, Louisiana, Maine, Maryland, Mississippi, Missouri, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, and Wisconsin.

B. Legal Basis

EPA is narrowing its previous approval for each of the affected SIPs because EPA erred when it approved each SIP's PSD program. In those approvals, EPA failed to account for an important flaw in the SIP. As a result, EPA is rescinding its previous approval for the part of the SIP that is flawed, and EPA is leaving in place its previous approval for the rest of the SIP. The flaw is that the applicability provisions of the PSD program (which determined the pollutants to which PSD permitting applies) were phrased so broadly that they could, under certain circumstances, sweep in more sources than the program could accommodate in light of the resources that, under the SIP—in accordance with what we refer to as the "state assurances" provision under CAA § 110(a)(2)(E)(i)—were available or for which a plan was in place to acquire. The part of PSD applicability that is broader than what the state assurances covered is the part that exceeds EPA requirements for PSD applicability. The following section discusses this basis in more detail, beginning with the PSD applicability provisions; then the state assurances provisions; and then how the two provisions, read together, gave rise to the flaws in the SIPs.

1. PSD Applicability

Each of the states subject to this rule has an approved PSD SIP program that applies to sources of pollutants subject to regulation under the CAA. Some states' programs meet EPA's PSD requirements as they read prior to promulgation of the 2002 NSR rulemaking, which we refer to as the NSR Reform rule.[11] These pre-Reform SIPs, include a PSD applicability provision that provides that PSD applies to "any air pollutant subject to regulation." 40 CFR 51.166(b)(1)(i) (2001). Other states subject to this rule have an approved PSD program that includes the NSR Reform rule. The Reform requirements, replaced the term "any air pollutant subject to regulation" with the term "regulated NSR pollutant," 40 CFR 51.166(b)(1)(i), and defined that latter term to include pollutants regulated under specified provisions of the CAA as well as "any pollutant that is otherwise subject to regulation under [the CAA]." 40 CFR 51.166(b)(49)(iv). This quoted provision is similar to the pre-Reform provision, as both include the phrase "subject to regulation" in reference to the types of air pollutants that will be subject to the PSD program. Thus, each of the states subject to this rule has an approved PSD program—whether pre-Reform or Reform—that applies to any air pollutant that is "subject to regulation" under the CAA.

These applicability provisions mean that under federal law, in each of these SIPs, PSD will expand to cover additional sources that emit a pollutant different than the ones already covered under the PSD program as soon as EPA promulgates a rule regulating that pollutant under any other provision of the CAA. Depending on the pollutant and the number and size of sources that emit it, these applicability provisions could result in a significant and rapid expansion of the PSD program. This is precisely what is happening at present, now that EPA has promulgated the LDVR, to take effect on January 2, 2011, at which time GHGs will become subject to regulation under CAA section 202(a).

Importantly, the states affected by this action, while including in their SIPs a PSD applicability provision that applies PSD to any pollutant "subject to regulation," generally do not interpret their applicability provision, or any other provision in their SIPs, to incorporate limits on PSD applicability with respect to a new pollutant and the SIPs do not contain any other mechanism that would allow the State to interpret applicability more narrowly. As a result, the affected states' applicability provisions include no way to limit the speed or extent of the expansion a PSD program might be required to undergo to regulate new pollutants.

The case of GHGs has highlighted the potential scale of a PSD program for a new pollutant under such open-ended provisions. As described in the final Tailoring Rule, EPA promulgated the LDVR, which is the rule that, upon January 2, 2011, when it takes effect, subjects GHGs to regulation. The LDVR identifies 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). Accordingly, the SIPs affected by this action will, as of January 2, 2011, treat GHGs as a pollutant "subject to regulation" and therefore apply PSD to GHG-emitting sources. As previously discussed, these SIPs will apply PSD to new GHG-emitting sources at the 100/250 tpy levels and to modified GHG-emitting sources at the any-mass-increase levels. None of these SIPs, as currently approved, permits the interpretation of the PSD applicability more narrowly, to apply to only GHG-emitting sources at or above the Tailoring Rule thresholds. In contrast, as previously noted, several other states are able to interpret their SIPs more narrowly and, as a result, are not subject to this action.

The scale of the administrative program needed to effectively permit all sources emitting GHGs at the 100/250 tpy levels has highlighted the unconstrained nature of the SIPs' applicability provisions. EPA has recognized that a PSD program regulating GHGs at the 100/250 tpy levels is administratively unmanageable and creates absurd results that were not intended by Congress when it passed the CAA. Thus, in the Tailoring Rule, EPA phased in GHG PSD applicability, so that at the outset PSD applies to GHG-emitting sources only if they also emit GHG in amounts above the 75,000/100,000 tpy CO_2e thresholds set out in that rule.[12] EPA included this limit in its regulations, and through this limit greatly reduced the extent of PSD applicability. This limit was set at a level at which EPA determined states would have the resources to implement a PSD program for GHG emissions. By contrast, each of these SIPs applies GHG PSD applicability more broadly—indeed, much more broadly, to far more

[11] "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Baseline Emissions Determination, Actual-to-Future-Actuals Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects," Final Rule, 67 FR 10816 (December 2, 2002).

[12] In its first phase, starting January 2, 2011, PSD requirements for GHGs apply to sources that are required to seek a PSD permit for non-GHG pollutants, and that also increase emissions of GHG by at least 75,000 tpy CO_2e. In its second phase, starting July 1, 2011, PSD requirements for GHGs will also apply to new sources that emit or with potential to emit at least 100,000 tpy CO_2e, and existing sources that emit or have the potential to emit 100,000 tpy CO_2e and that undertake a modification that increases net emissions of GHGs by at least 75,000 tpy CO_2e.

sources and to much smaller sources—than EPA's regulations do.

We note that there is nothing inherently problematic about a SIP imposing PSD applicability, or applying other control requirements, as broadly as a state might choose. SIPs may lawfully do so and EPA may lawfully approve them in accordance with the provisions of section 110(a) of the CAA. Similarly, there is nothing inherently problematic with a SIP failing to include any measures to limit the scope of its control requirements. Even so, the SIP must provide for adequate resources, and must do so on the appropriate schedule, as discussed next.

2. State Assurances of Adequate Resources

Each of the states subject to this rule was also required to include in its SIP adequate state "assurances," in accordance with CAA section 110(a)(2)(E)(i). This provision requires the SIP to "provide * * * necessary assurances that the State * * * will have adequate personnel, funding, and authority under State * * * law to carry out such implementation plan* * *." EPA has implemented this requirement in 40 CFR 51.280, which provides,

> Each plan must include a description of the resources available to the State and local agencies at the date of submission of the plan and any additional resources needed to carry out the plan during the 5-year period following its submission. The description must include projections of the extent to which resources will be acquired at 1-, 3-, and 5-year intervals.

These CAA and regulatory requirements concerning assurances apply to the SIP as a whole, including the PSD program. Therefore, at the time that the state submitted the PSD provisions of the SIP for EPA approval, the SIP was required to include assurances that adequate resources would be available to implement the SIP in its entirety, including the PSD program.

As previously noted, the affected SIPs included expansive PSD applicability provisions for newly regulated pollutants, without a means to limit that applicability. Under these circumstances, state assurances are needed to assure adequate resources in the event of an expansion of the PSD program to new pollutants, even when this would require a rapid and sizeable expansion of the resources dedicated to the state PSD program, whether due to the large number of sources emitting the new pollutant or any other reason. EPA has the authority to define, under CAA section 110(a)(2)(E)(i), what assurances are "necessary" so that the state will have "adequate" resources. To be sure, EPA does not read the assurances requirement to require that the state should somehow hold in reserve large amounts of resources to cover the possibility that the PSD program would undergo such a large and rapid expansion. However, EPA does read the requirement to require that the state have a plan for acquiring the requisite additional amount of resources in the case of an expansion in PSD applicability. Moreover, that plan should include an implementation schedule that would be consistent with the timing of expansion in PSD applicability. PSD expansion may occur quite rapidly because PSD requirements apply immediately once they are triggered by subjecting a pollutant to regulation. This is because of the CAA requirement that stationary sources may not construct or modify unless they first have acquired a permit. CAA section 165(a). That is, as soon as a pollutant is subject to regulation—as will occur for GHGs on January 2, 2011—the pollutant-emitting sources to which PSD then applies cannot lawfully undertake construction or modification projects without first procuring a PSD permit.

It is clear, however, that none of the SIPs affected by this action include such a plan among their assurances. In the proposed Tailoring Rule, EPA stated that at the time that the LDVR triggers PSD applicability, if it triggers such applicability at the 100/250 tpy level, then far greater numbers of sources will require permitting than currently do. As a result, EPA added, the administrative burdens associated with permitting small sources for affected state and local permitting authorities would overwhelm the authorities. For each state, EPA proposed to rescind approval of the part of the SIP that applies PSD to sources below the Tailoring Rule thresholds, unless the state demonstrated that it had adequate resources to permit at the lower levels. During the comment period on this proposal, no authority contested this understanding of the facts, none stated that they could administer PSD at the 100/250 tpy levels, and none contested the proposal on grounds that they have 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. 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 PSD for GHG-emitting sources.[13] In those letters, none of the states claimed they could, or intended to, implement the Tailoring Rule at the statutory levels. From all this, it is clear that none of the states had included in their state assurances an adequate plan to acquire resources to administer the PSD program for their GHG-emitting sources at the 100/250 tpy level.

It must be emphasized that there is nothing inherently problematic with a SIP whose state assurances do not include the previously-described plan to acquire additional resources. Only SIPs that lack any constraints to limit PSD applicability for new pollutants to match their resources must include such a plan.

3. Flaw in SIP

Based on the previous analysis, it is clear that the SIPs subject to this action are flawed. They each are structured in a manner that may impose PSD applicability on new pollutants in an unconstrained manner, and yet they do not have a plan for acquiring resources to adequately administer any large new components of the PSD program, and to do so on the same schedule that sources may become subject to PSD. As previously explained, the SIPs' unconstrained applicability is not by itself a flaw. The flaw is the combination of that unconstrained applicability and the failure of the SIP to plan for adequate resources for that applicability, and do so on the appropriate time-table. In short, the SIPs' PSD applicability provisions and their state assurances are mismatched and therefore the SIP is flawed. As previously discussed, EPA's recently promulgated GHG rules have highlighted this flaw.

EPA notes that since the enactment of the PSD provisions, EPA has periodically subjected pollutants to control for the first time, thereby triggering PSD applicability. At the time the affected SIPs were submitted and approved, this structural flaw could have been recognized. That is, it could have been recognized that (i) the PSD applicability provisions were essentially unconstrained, but that the resources the state assured would be available were constrained; and (ii) at some point in time, a pollutant could become newly regulated that would expand PSD applicability to a point that would require resources beyond what the state assured would be available. It bears reiterating that EPA has discretion to interpret the CAA's SIP requirements,

[13] The 60-day letters are available at *http://www.epa.gov/NSR/2010letters.html.*

including what state assurances are required. In EPA's view, the breadth of the affected SIPs' provisions concerning PSD applicability, combined with the limited state assurances, constitutes a flaw.

C. Legal Mechanisms for EPA Action

Because the SIPs were flawed, EPA approval of them was in error. Two mechanisms are available for addressing that error: The error correction mechanism provided under CAA section 110(k)(6), 42 U.S.C. section 7410(k)(6), or EPA's inherent general authority to reconsider its own actions under CAA section 301(a), 42 U.S.C. section 7601(a), read in conjunction with CAA section 110(k) and other statutory provisions, and case law holding that an agency has inherent authority to reconsider its prior actions.

1. Error Correction Under CAA Section 110(k)(6)

CAA section 110(k)(6) provides as follows:

> Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

The key provisions are that the Administrator has the authority to "determine [ ]" when a SIP approval was "in error," and when she does so, she may then revise the SIP approval "as appropriate," in the same manner as the approval, and without requiring any further submission from the state. With this action, EPA is determining that its action approving the PSD SIP provisions was "in error" due to the mismatch, previously discussed, between the PSD applicability provisions and the state assurances. EPA is further determining that the appropriate action EPA can take—in light of EPA's proposal as part of the proposed Tailoring Rule—to revise that prior action is to rescind approval of the PSD program to the extent it applies PSD to GHG-emitting sources below the Tailoring Rule threshold. Thus, EPA is narrowing its approval of the PSD programs as indicated. EPA may consider further action in the future.

a. Type of Error

These determinations are authorized under the CAA. First, approval of the SIPs in light of the mismatch constitutes an "error" within the meaning of CAA section 110(k)(6). As previously quoted, CAA section 110(k)(6) provides EPA with the authority to correct its own "error," but nowhere does this provision or any other provision in the CAA define what qualifies as "error." Thus, the term should be given its plain language, everyday meaning. Webster's II Dictionary defines an "error" as: "(1) an act, assertion, or belief that unintentionally deviates from what is correct, right or true, (2) the state of having false knowledge . . . (4) a mistake . . ." *Webster's II New Riverside University Dictionary* 442 (Houghton Mifflin Co. 1988). Similarly, t*he Oxford American College Dictionary* 467_(2d ed. 2007) defines "error" as "a mistake" or "the state or condition of being wrong in conduct or judgment." These definitions are broad, and include all unintentional, incorrect or wrong actions or mistakes.

The legislative history of CAA section 110(k)(6) is silent regarding the definition of error, but the timing of the enactment of the provision suggests a broad interpretation. The provision was enacted shortly after the Third Circuit decision in *Concerned Citizens of Bridesburg* v. *U.S. EPA,* 836 F.2d 777 (1987). In *Bridesburg,* the court adopted a narrow interpretation of EPA's authority to unilaterally correct errors. The court stated that such authority was limited to typographical and other similar errors, and stated that any other change to a SIP must be accomplished through a SIP revision. *Id.* at 786. In *Bridesburg,* EPA determined that it lacked authority to include odor regulations as part of a SIP unless the odor regulations had a significant relationship to achieving a NAAQS, and so directly acted to remove 13-year-old odor provisions from the Pennsylvania SIP. *Id.* at 779–80. EPA found the previous approval of the provisions to have been an inadvertent error, and so used its "inherent authority to correct an inadvertent mistake" to withdraw its prior approval of the odor regulations without seeking approval of the change from Pennsylvania. *Id.* at 779–80, 785. After noting that Congress had not contemplated the need for revision on the grounds cited by EPA, *Id.* at 780, the court found that EPA's "inherent authority to correct an inadvertent mistake" was limited to corrections such as "typographical errors," and that instead EPA was required to use the SIP revision process to remove the odor provision from the SIP. *Id.* at 785–86.

When the court made its determination in *Bridesburg* in 1987, there was no provision explicitly addressing EPA's error correction authority under the CAA. In 1990, Congress passed CAA section 110(k)(6), apparently for the purpose of overturning the *Bridesburg* opinion. This is apparent because CAA section 110(k)(6) both (i) authorizes EPA to correct SIP approvals and other actions that were "in error," which, as previously noted, broadly covers any mistake, and thereby contrasts with the holding in *Bridesburg* that EPA's pre-section 110(k)(6) authority was limited to correction of typographical or similar mistakes; and (ii) provides that the error correction need not be accomplished via the SIP revision or SIP call process, which contrasts with the holding of *Bridesburg* requiring a SIP revision. Because Congress apparently intended CAA section 110(k)(6) to overturn *Bridesburg,* the definition of "error" in that provision should be sufficiently broad to encompass the error that EPA asserted it made in its approval action at issue in *Bridesburg,* which goes well beyond typographical or other similar mistakes.

EPA has used CAA section 110(k)(6) in the past to correct errors of a non-technical nature. For example, EPA has used CAA section 110(k)(6) as authority to make substantive corrections to remove a variety of provisions from federally approved SIPs that are not related to the attainment or maintenance of NAAQS or any other CAA requirement. *See, e.g.,* "Approval and Promulgation of Implementation Plans; Kentucky: Approval of Revisions to the State Implementation Plan," 75 FR 2440 (Jan. 15, 2010) (correcting the SIP by removing a provision, approved in 1982, used to address hazardous or toxic air pollutants); "Approval and Promulgation of Implementation Plans; New York," 73 FR 21,546 (April 22, 2008) (issuing a direct final rule to correct a prior SIP correction from 1998 that removed general duties from the SIP but neglected to remove a reference to "odor" in the definition of "air contaminant or air pollutant"); "Approval and Promulgation of Implementation Plans; New York," 63 FR 65557 (Nov. 27, 1998) (issuing direct final rule to correct SIP by removing a general duty "nuisance provision" that had been approved in 1984); "Correction of Implementation Plans; American Samoa, Arizona, California, Hawaii, and Nevada State Implementation Plans," 63 FR 34,641 (June 27, 1997) (correcting five SIPs by deleting a variety of administrative provisions concerning variances, hearing board procedures, and fees that had been approved during the 1970s).

EPA's approval of the PSD SIP provisions, in light of the mismatch between those provisions and the state assurances, was "in error" within the meaning of CAA section 110(k)(6). Under the familiar *Chevron* two-step framework for interpreting administrative statutes, an agency must, under *Chevron* step 1, determine whether "Congress has directly spoken to the precise question at issue." If so, "the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." However, under *Chevron* step 2, if "the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron U.S.A. Inc.* v. *NRDC,* 467 U.S. 837, 842–43 (1984).

As previously discussed, the PSD SIPs were flawed due to the mismatch between the PSD applicability provisions and the state assurances. EPA's action approving the PSD SIPs in the face of that flaw was "in error" under CAA section 110(k)(6) in accordance with *Chevron* step 1. As previously discussed, "error" should be defined broadly to include any mistake, and approval of a flawed SIP is a mistake.

Even if the term "error" is not considered unambiguously to encompass the mistake that EPA made in approving the PSD SIPs under *Chevron* step 1, and instead is considered ambiguous on this question, then under *Chevron* step 2 EPA has sufficient discretion to determine that its approval action meets the definition of "error." That is, under CAA section 110(k)(6), both the breadth of the term "error" and the authorization for EPA to "determine[ ]"—which is a directive that is inherently discretionary—when it made an error, point towards EPA having sufficient discretion to identify the mismatch in the SIPs as a flaw and to identify its action in approving the PSD SIPs in the face of that mismatch as an error under that provision.

b. Narrowing of Approval

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. The term "appropriate" is open-ended, and therefore confers broad discretion upon EPA to fashion a reasonable type of correction. More generally, CAA section 110(k)(6) authorizes EPA to "determine[ ]" that its action was in error, and does not direct or constrain that determination in any manner. That is, the provision does not identify any factors that EPA must, or may not, consider in making the determination. This further indicates that this provision confers broad discretion upon EPA.

EPA's action corrects the error by rescinding EPA's approval of the PSD threshold provisions to the extent they apply PSD requirements to sources of GHG emissions below the final Tailoring Rule thresholds. Correcting the error in this fashion is appropriate because it narrows the approval to the PSD requirements to the extent they apply to GHG-emitting sources at or above the final Tailoring Rule thresholds. This approach (i) renders the PSD applicability provisions consistent with EPA regulations and (ii) solves the mismatch previously described by assuring that SIP PSD applicability to GHG sources is consistent with EPA's interpretation of the scope of the state assurances of adequate resources for PSD administration.

Correcting the error in this fashion—narrowing the approval of SIPs—is also consistent with the approach that the affected states are taking to administer PSD to GHG-emitting sources. The states have advised EPA that they are proceeding to develop SIP revisions to implement the Tailoring Rule and thereby narrow their SIP PSD programs to GHG-emitting sources at or above the Tailoring Rule thresholds. EPA's record in the Tailoring Rule indicates that the states should have adequate resources to implement their PSD program for GHG-emitting sources at the Tailoring Rule thresholds. In contrast, no state has informed EPA that it prefers to maintain its PSD applicability at the 100/250 tpy level and that it intends to acquire the additional resources to do so.

At this time, EPA is not further addressing, and therefore is not rescinding its approval of, the affected SIPs' PSD applicability provisions to the extent they remain unconstrained in the manner in which they incorporate newly regulated pollutants in respects other than PSD applicability to GHG-emitting sources below the Tailoring Rule thresholds. As a procedural matter, EPA did not propose to do so in the Tailoring Rule proposal and EPA did not receive any comments indicating that it should do so. In addition, CAA section 110(k)(6) gives EPA the authority to make corrections "as appropriate." This language provides EPA with discretion to choose how to make corrections. The current problem resulting from EPA's erroneous approvals of the SIPs in question is limited to the regulation of GHG emissions, and the current rule addresses this problem. The scope of this action does not foreclose further action to address EPA's error in the future. An agency may properly address an issue in step-by-step fashion. *See, e.g., Grand Canyon Air Tour Coalition* v. *F.A.A.,* 154 F.3d 455 (DC Cir. 1998), *City of Las Vegas* v. *Lujan,* 891 F.2d 927 (DC Cir. 1989). 75 FR at 31544.

In accordance with CAA section 110(k)(6), EPA has conducted this narrowing of approval through notice-and-comment rulemaking, which is the same manner as EPA conducted the prior approval.

2. Reconsideration Under CAA Section 301 and Case Law

In the alternative to the error correction under CAA section 110(k)(6) discussed above, EPA is using its authority to reconsider its prior approval actions in order to narrow its approval of the SIPs at issue. This authority lies in CAA section 301(a), read in conjunction with CAA section 110(k) and other statutory provisions, and case law holding that an agency has inherent authority to reconsider its prior actions.

EPA approved some of the SIP PSD provisions affected by this rule prior to 1990, under the authority of CAA section 110 as it read prior to amendment by the 1990 CAA Amendments. Prior to the amendments, CAA section 110(a)(2) authorized EPA to "approve or disapprove [a SIP], or any portion thereof." EPA approved the rest of the SIP PSD provisions affected by this rule after 1990, i.e., under the authority of CAA section 110(k)(3)–(4) as added by the 1990 CAA Amendments. These sections authorize EPA to approve a SIP submittal "as a whole," "approve [the SIP submittal] in part and disapprove [it] in part," or issue a "conditional approval" of a SIP submittal. CAA section 110(k)(3)–(4).

In approving the SIPs under either CAA section 110(a)(2) as it read prior to 1990 or CAA section 110(k), EPA retained inherent 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); *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").

Section 301(a) of the CAA, read in conjunction with CAA section 110 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—in light of EPA's inherent authority as recognized under the case law to do so—and as a result, CAA section 301(a) confers 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). These authorizations for other persons to petition EPA to amend or repeal a rule suggest that EPA has inherent authority, on its own, to issue such amendment or repeal. This is because EPA may grant a petition from another person for an amendment to or repeal of a rule only if justified under the CAA, and if such an amendment or repeal is justified under the CAA, then EPA should be considered as having inherent authority to initiate the process on its own, 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 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. In this rule, EPA is using its authority to reconsider and narrow its prior approval of SIPs generally in the same manner as it did in connection with California conformity SIPs.

V. Comments and Responses

In this section, we provide responses to comments we received on the proposed Tailoring Rule on narrowing EPA's approval of some SIPs. Several industry commenters (4095, 4106, 4118, 4691, 4870, 5083, 5058, 5131, 5133, 5137, 5140, 5179, 5181, 5278, 5317, 5713, 6414, 16411) and state commenters (2729, 4019, 4866, 4989, 5039, 5084) object to our proposal to narrow our approval of previously fully approved SIPs. One industry commenter (4298) supports our proposal, though would like EPA to take additional actions as well. An environmental commenter (5306) also believes that EPA should accompany its proposed actions with a SIP call.

A. Comments Regarding the Legal Mechanism for the Current Action

Commenters argued that neither CAA section 110(k)(6) error correction authority nor EPA's general authority under CAA 301(a) and APA 553(e) support the action EPA now takes. The arguments opposing both legal mechanisms for this rule include the following:

- The EPA's CAA section 110(k)(6) justification is flawed because section 110(k)(6) authority is limited to the correction of technical or clerical errors made in a SIP approval and does not allow any unilateral revision by EPA of substantive provisions or any changes to the nature or terms of a SIP that EPA has approved in the past. (2797, 4019, 4866, 4870, 4989, 5039, 5083, 5133, 5131, 5140, 5179, 5181, 5279, 5317, 6414)
- The type of action EPA wishes to undertake can only be taken through a SIP call under section 110(k)(5) of the CAA, although that section is not applicable in this situation because SIPs that incorporate the CAA applicability thresholds are not inadequate to "comply with any requirement of the Act." (4106, 4691, 4870, 5058, 5140, 5181, 5278, 5317, 6414)
- The EPA's retroactive limitation on its prior approval of the SIPs is not being done to correct a mistake—even EPA does not claim its approvals were in error at the time it promulgated them. Rather, the Agency is trying to change the SIPs now to avoid substantive and timing problems it has created by its own deliberate actions. (4870, 5058, 5131, 5140, 5181, 5278, 5317, 6414)
- The EPA is not proposing to correct any "error" "in the same manner" as it made its approval. The proposed Tailoring Rule in effect proposes a blanket narrowing on all past approvals; EPA is not issuing an individualized new proposed approval (or disapproval) action for each SIP that had been the subject of an individual EPA notice-and-comment SIP approval proceeding. A SIP call is the proper procedure to address any alleged inadequacies in state resources. (2797, 4989, 5181, 5317)
- In *Concerned Citizens of Bridesburg* v. *EPA,* 836 F.2d 777 (3d Cir. 1987), the court invalidated EPA's attempt to rescind approval of a SIP revision that EPA had approved 13 years earlier on grounds that EPA's original approval was in error. The Court explained that in fact the SIP approval was no longer consistent with EPA policy due to an intervening change in that policy, and that the SIP approval was not an inadvertent mistake that would justify a unilateral change in disregard of procedural requirements for SIP revisions. Some commenters state that in order to be a mistake under *Bridesburg,* the original SIP approval must have been contrary to agency policy at the time of the SIP approval. One commenter also cited *Detroit Edison Co.* v. *EPA,* 496 F.2d 244, 248–49 (6th Cir. 1974) in support of its argument that a substantive change to a SIP is a change in policy rather than a correction of an inadvertent mistake, and EPA cannot implement such a policy change in a SIP unilaterally (a proposed clarification by EPA of a SIP several months after promulgation was not in fact a clarification but a revision because it effected substantive change). (4870, 5080, 5140, 5181, 5278, 5317)
- The EPA's invocation of section 110(k)(6) establishes a troubling precedent that undermines the role of states under the CAA. The EPA's approach is unguided by any standards, criteria, or precedent. States and regulated sources would no longer have confidence that they could rely on approved SIPs, safe from EPA's revision of those SIPs whenever the Agency decides—on any grounds it chooses or no grounds at all—that its prior approval had been an "error." Under this interpretation of section 110(k)(6), EPA could dispense entirely with SIP calls under section 110(k)(5) and the states' role in SIP revisions, which was clearly not what Congress had in mind when it enacted section 110(k). The EPA's approach seriously undermines the carefully crafted federal-state

partnership the CAA creates, which assigns states the primary role in designing SIPs, while giving EPA a more limited, reviewing role. (4870, 5039, 5140, 5181, 5278, 5317)

• The EPA has overstated its authority under CAA section 301(a). The District of Columbia Circuit (DC Circuit) has observed that CAA 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. If there was a mistake in prior SIP approvals as EPA contends, section 110(k)(5) is EPA's sole and exclusive mechanism for seeking to correct a SIP that has been determined to be inadequate. (4019, 4866, 4870, 5058, 5083, 5131, 5140, 5181, 5278, 5317, 5714)

• 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. In addition, CAA section 307(d)(1)(B) and the penultimate sentence of section 307(d)(1) expressly state that the provisions of section 553 do not apply to "the promulgation or revision of an implementation plan by the Administrator" under CAA section 110(c), which, in practical effect, is the action EPA proposes here. 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, 5714)

As previously discussed, EPA's error correction authority under CAA section 110(k)(6) and, in the alternative, CAA section 301, read in light of EPA's general authority to reconsider its actions, support the action EPA now takes to narrow its prior approval of some states' SIPs. The SIP call process is a distinct and separate authority that Congress has given to EPA for use when EPA determines that a current SIP is substantially inadequate to attain or maintain compliance with the CAA requirements. This process is a means for EPA to require state action. *See, e.g., Sierra Club* v. *Georgia Power Company,* 443 F.3d 1346, 1348 (11th Cir. 2006) (describing the SIP call process generally as a means to state action). Congress explicitly laid out EPA's error correction authority under CAA section 110(k)(6), as a means for EPA to unilaterally reconsider its own prior actions without using a SIP call. EPA's general reconsideration authority also applies to EPA's reconsideration of its own actions.

Sections 110(k)(5) and (6) of the CAA are intended to address different types of problems with SIPs. Section 110(k)(6) targets "error[s]" that EPA made at the time it approved the SIP. Thus, EPA may rely on CAA section 110(k)(6) when EPA's own action—e.g., its original approval of a state's SIP—is erroneous. In contrast, section 110(k)(5) targets "substantial [ ] inadequa[cies]" that prevent the SIP's compliance with CAA requirements and that exist in the SIP at the time of the SIP call regardless of when the substantial inadequacy first arose. Thus, a SIP whose approval was appropriate at the time but later may be shown to contain substantial inadequacies could be amended by the state using a SIP call under CAA section 100(k)(5), but could not be corrected by EPA under CAA section 110(k)(6).

Even so, many circumstances may arise where either a CAA section 110(k)(6) correction or a section 110(k)(5) SIP call could be appropriate. These are situations in which EPA erred in approving a SIP because the SIP was flawed, and that flaw constitutes a substantial inadequacy that prevents the SIP's compliance with a CAA requirement. Under these circumstances, EPA may choose between CAA section 110(k)(6) or section 110(k)(5), and nothing in either of those provisions precludes EPA from choosing to use the other one in the case of an overlap. Section 110(k)(6) of the CAA provides that "[w]henever the Administrator determines that [a specified action] was in error, the Administrator may * * * revise such action* * *." This provision grants discretion to the Administrator to make the indicated determination (including the timing of the determination) and then grants the Administrator the discretion ("may") to revise the action. No other provision in CAA section 110(k)(6), and none in section 110(k)(5), precludes that discretion in a situation in which the Administrator could have instead relied on section 110(k)(5). By the same token, CAA section 110(k)(5) provides that "[w]henever the Administrator finds that the applicable implementation plan for any area is substantially inadequate * * * to * * * comply with any requirement of [the CAA], the Administrator shall require [a SIP revision]." This provision also grants discretion to the Administrator to make the indicated finding (including the timing of the finding) that would trigger the requirement for a SIP revision. No other provision in CAA section 110(k)(5) mandates that the Administrator make the finding (and thereby trigger the requirement for a SIP revision) even if the Administrator could otherwise rely on section 110(k)(6). *See also New York Public Interest Research Group* v. *Whitman,* 321 F.3d 316, 330–31 (2d Cir. 2003) (finding that opening phrase "Whenever the Administrator makes a determination" in CAA section 502(i)(1) grants EPA "discretion whether to make a determination"); *Her Majesty the Queen in Right of Ontario* v. *U.S. E.P.A.,* 912 F.2d 1525, 1533 (DC Cir. 1990) (finding "whenever" in CAA section 115(a) "impl[ied] a degree of discretion" in whether EPA had to make an endangerment finding). Indeed, if, as commenters suggest, section 110(k)(5) were viewed as predominating over section 110(k)(6), then there would be very few circumstances under which section 110(k)(6) would be available because in many instances, the type of error that the Administrator would see fit to correct under section 110(k)(6) would be one that would cause a SIP to be "substantially inadequate" to meet CAA requirements. Such a narrow role for section 110(k)(6) is inconsistent with its plain language, which, again, authorizes its usage "whenever" the Administrator "determines" that EPA's action was in "error." As previously noted, the term "error" should be defined broadly to include any unintentional mistake, and the other quoted terms inherently provide discretion.

In addition to Congress's explicit grant of error correction authority, the DC Circuit recently affirmed EPA's inherent authority to reconsider its own actions in *New Jersey* v. *EPA,* 517 F.3d 574 (DC Cir. 2008), where it explained that an agency normally can change its position and reverse a prior decision. However, the Court added that "when Congress has provided a mechanism capable of rectifying mistaken actions * * * it is not reasonable to infer authority to reconsider agency action." *New Jersey,* 517 F.3d at 583. In that case, the Court did find that Congress had, in fact, limited EPA's ability to remove sources from the list of HAP source categories, once listed, by requiring EPA to follow the specific delisting process at CAA section 112(c)(9).

In the present case, EPA believes that it has the general authority under the CAA to reconsider its previous actions. Congress has also added the specific provision CAA section 110(k)(6), which authorizes correction of errors. EPA

believes that this error correction provision authorizes this action. If section 110(k)(6) has the breadth that EPA believes it has, then it may take the place of EPA's inherent authority to reconsider prior erroneous actions. If section 110(k)(6) has a more limited breadth and does not apply to this action, then EPA continues to have inherent authority to make corrections beyond what section 110(k)(6) authorizes, including this action.

As previously discussed, EPA finds support for its general authority to reconsider under CAA section 301(a). However, we are not relying on CAA section 301(a) as carte blanche authority to promulgate any rules; rather, we are relying on CAA section 301(a) because this action carries out EPA's functions, to reconsider its action under CAA section 110 in approving SIP revisions, as authorized under the case law previously cited. Likewise, EPA finds some support for its authority in APA section 553(e). However, EPA is not relying on APA section 553(e) as direct authority for this action, under which EPA is correcting an error. Rather, EPA considers APA section 553(e) to support the proposition — also supported by case law—that EPA has inherent authority to correct an error. Similarly to the APA, CAA section 307(b)(1), which contemplates petitions for reconsideration by EPA of actions taken on SIP submissions, supports the proposition that EPA has inherent authority to reconsider prior decisions that were in error.

Commenters' concerns that EPA's approach to this rule seriously undermines the CAA federal-state partnership and the primary role given the states in the SIP development process are unfounded. This rule simply corrects an error in accordance with CAA section 110(k)(6); the primary role of states and the nature of the federal-state partnership certainly remains intact. States remain the developers and drafters of the SIPs; EPA remains the arbiter of whether the submitted SIP provisions meet necessary requirements, and thus should be part of the SIP. This federal-state partnership cannot preclude EPA from correcting errors in its own SIP approvals, and the partnership is not threatened by such error corrections. In addition, in accordance with CAA section 110(k)(6), EPA exercises its authority under this provision through notice and comment rulemaking, in which states have the opportunity to comment in order to shape the outcome. Historically, EPA has exercised its authority under CAA section 110(k)(6) very sparingly and judiciously. In the current case, EPA has taken this action after close communication with the states.

As previously discussed, the SIPs addressed here each contained a mismatch between their PSD applicability provisions and their state assurances of adequate resources. EPA erred in approving those SIPs. Since this error recently became apparent, EPA is now promptly taking steps to correct the error in a manner it deems appropriate. We find that use of our CAA section 110(k)(6) authority is appropriate because we are able to rectify the problem with the SIP without the need for state action, and because this approach provides the most efficient means for making the correction. Importantly, however, EPA is not basing its error correction on a change in its approach to an old policy, but rather on a flaw in the SIP that existed at the time of EPA's action on the SIP but which has only recently become apparent.

Section 110(k)(6) of the CAA is available to correct any error in a SIP; EPA disagrees with the commenters who state that this provision may only be used for technical or clerical errors. As previously discussed, 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).

Conversely, commenters' concerns that this rule sets a troubling precedent because it is unguided by any standards, criteria or precedent are unfounded. This rule is based on a flaw in the relevant SIPs and EPA's error in approving the SIPs with that flaw. EPA's application of CAA section 110(k)(6) is, by the terms of that provision, limited to an error correction, and this action does not go beyond that limit.

EPA conducted notice and comment on the approval-narrowing for each relevant SIP. This notice and comment process, followed by the issuance of the final rule, corrects the errors in these SIPs in the same manner that EPA previously approved the SIPs. EPA also made an individualized determination regarding each affected SIP that the SIP contains a mismatch between its PSD applicability and state assurances provisions. For each SIP, this mismatch has been made evident, as previously discussed, by (i) EPA's finding in the Tailoring Rule that under their current SIPs, the states would be required to process an enormous number of PSD permits for small GHG-emitting sources, which would overwhelm state resources; and (ii) the fact that no state has objected to this finding and asserted that it does have adequate resources, or that it previously assured EPA it would have adequate resources, for this purpose.

EPA's narrowing of approval amounts to a revision to the federal SIP, but that is inherent in its ability to correct its SIP action under CAA section 110(k)(6). EPA is not changing the state law component of the SIP, which remains fully state enforceable.

B. Comments on Potential Triggering of Anti-Backsliding Provisions

Some commenters expressed concern that anti-backsliding provisions would prevent revision of SIPs to increase the significance threshold for GHG emissions. Commenters were concerned that the EPA's approach to ask states to quickly revise their SIPs to comport with the increased significance thresholds is likely to be challenged by activist groups citing the CAA's anti-backsliding provisions, which limit relaxation in certain rules. Under EPA's interpretation of PSD applicability, once the LDVR requires PSD to apply to GHGs, the existing thresholds contained in SIPs could be alleged by activist groups to become binding on GHGs under the anti-backsliding arguments that these groups are currently advancing in various court cases. Thus, even if a state wanted to revise its regulations similarly to the federal Tailoring Rule and thereby relax the threshold, the anti-backsliding provision might prevent it. (5140, 5181, 5278). One commenter was also concerned more generally that anti-backsliding rules prevent EPA from "adjust[ing] greenhouse gas levels" under the Tailoring Rule. (5713).

None of these comments raised objections to this action narrowing EPA's prior approval of SIPs. Thus, it is not necessary to address these comments here. However, to the extent the concern expressed in these comments could have been raised by changes to SIPs resulting from EPA's narrowing of its prior approval, we choose to address the comments here in the interest of greater responsiveness.

While many commenters did not clarify which CAA provisions they considered "anti-backsliding provisions", they most likely meant to refer to CAA sections 110(l), 110(n)(1), or 193. However, the current rule does not violate any of these provisions.

Under CAA section 193, EPA may only modify any "control requirement" applicable to a nonattainment area that was required or in effect prior to November 15, 1990 if "the modification insures equivalent or greater emission reductions of such air pollutant." These provisions of section 193 apply to controls for pollutants for which an area is designated nonattainment. No area of the country is designated nonattainment for GHGs. This rule prevents certain sources or modification projects that are not currently subject to PSD requirements from becoming subject to PSD due to their emissions of GHGs on January 2, 2010 when GHGs will become "subject to regulation" for purposes of the PSD program. GHGs are not currently subject to regulation under the PSD program. Furthermore, the PSD program does not require emission offsets for new or modified major sources, and EPA does not consider the PSD program to achieve "emissions reductions" for purposes of section 193. Rather, the program merely limits future emissions growth. Thus, section 193 would not limit alteration of a PSD program because any revised program would meet the statutory test. Therefore, the current rule does not violate CAA section 193.

CAA section 110(l) provides that EPA shall not approve a SIP revision "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in [CAA section 171]), or any other applicable requirement of this chapter." CAA section 171 defines "reasonable further progress" as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." The current rule does not approve a SIP revision. The current rule also would not interfere with attainment of any NAAQS, or with any other requirement of the CAA.

CAA section 110(n)(1) states that a provision that was in a SIP prior to November 15, 1990 may only be changed if it is "approved or promulgated by [EPA] pursuant to this chapter." The current rule is being approved by EPA pursuant to this chapter. The procedure of approval is pursuant to the CAA, and the rule's substance does not violate CAA section 110(l) or any other CAA provision.

CAA section 172(e), which was cited specifically by one commenter, applies to EPA action to "relax a [NAAQS] after November 15, 1990." Since GHGs are not a NAAQS pollutant and this rule does not change any NAAQS standard, this provision is not applicable to the current rule.

C. Comments on Persisting Practical Difficulties at the State Level

EPA received comments that raised concern that EPA is ignoring the fact that it will take time for the states to amend their laws and regulations to accommodate the revised applicability thresholds. Commenters expressed concern that it will be of little help for EPA to quickly amend the relevant SIPs because states will still be bound to implement their underlying programs until corrections can be made. For sources, this means no relief from the statutory thresholds for a lengthy time after GHGs become regulated. (4019, 4095, 4866, 5080, 5083, 5084, 5131, 5133, 5140, 5179, 5278, 5317, 16411)

After this action is published and becomes effective, federal law will not require affected states to issue PSD permits for GHGs emitted at levels below the Tailoring Rule thresholds. Thus, sources in these states emitting GHGs below the Tailoring Rule thresholds will not be federally required to obtain a PSD permit for those emissions.

No action by EPA can amend state law requirements, or relieve emitters of responsibilities under state law. However, most states affected by this rule have already begun the process of amending their state regulations to incorporate the Tailoring Rule thresholds. As previously noted, almost all states are on track to have changed their state law to incorporate the Tailoring Rule thresholds by January 2, 2011 or very shortly thereafter. EPA encourages states to continue to pursue this process. Once states change their state law to incorporate the Tailoring Rule thresholds, then both the state law and federal law permitting requirements will be resolved. States can then process their revised state laws into SIP revisions and submit them for approval. In the proposed GHG PSD SIP Call preamble, EPA included recommendations for some states to streamline their SIP development processes; those recommendations could be used here. In the same proposal, EPA encouraged states to submit their SIP revisions for parallel processing, and thereby speed EPA approval. EPA recognizes that it may take some months to receive EPA approval of the SIP revision, but during this time, the State and Federal law will already each have been changed. This rule thus helps ensure that sources emitting GHGs at below-Tailoring Rule levels will have relief from GHG permitting requirements as early as possible.

D. Comments on Preferred Alternative Courses of Action

EPA received comments advocating alternate courses of action to address SIPs with the 100/250 tpy thresholds for GHGs. These comments include the following:

- If EPA wishes to pursue its current regulatory strategy, it could amend the minimum PSD SIP elements in 40 CFR 51.166 and allow states to develop and submit SIP revisions in accordance with those new provisions. (5182, 5317)
- The EPA should exercise all available legal authority to ensure that SIPs come into conformity with the Tailoring Rule. Instead of taking no action other than to limit approval of SIPs, EPA should mandate or strongly encourage states to revise their PSD rules to reflect the higher thresholds. This could be accomplished through an expedited SIP call or by conditioning section 105 grant funding on appropriate revisions to the PSD rules in SIP-approved states. (4691)
- An industry commenter (4298) supports EPA's efforts to narrow 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 commenter also believes that EPA should not finalize any action that would trigger GHG permitting until each state program has been amended (4298).
- An environmental group commenter (5306) believes that EPA and the states should collaborate on an expeditious, smooth transition in carrying out obligations to address GHGs under the PSD programs. The commenter believes it is reasonable for EPA to call for a SIP revision under section 110(k)(5) with an expeditious deadline for states to submit corrective plan revisions. Further, according to the commenter, EPA can ease state adoption of PSD permit program revisions and expedite EPA's own review and approval of the states' adjustments by adopting model guidelines to help inform state rulemaking. The commenter recommends that EPA should promptly start the process with the aim to complete it by the end of 2010.

As previously noted, EPA is strongly encouraging states to amend their SIP requirements to conform to the PSD thresholds established in the final Tailoring Rule, and this rule is consistent with such action. In fact, many states have already begun the process of amending state regulations and submitting those changes to EPA for approval. EPA is working closely with many states to help complete this process as expeditiously as possible. This close interaction obviates the need for guidelines on how states might amend their laws. EPA's narrowing of our prior approval of some SIPs is intended to assure that at least the federal law component of these SIPs will, in essence, reflect the Tailoring Rule thresholds, since not all states whose SIPs will cover GHGs on January 2, 2011 will be able to amend their SIP thresholds by that date.

EPA does not feel that a SIP call would provide any additional benefit over the current action. Since the affected states are already making efforts to change their state laws and amend their SIPs, and have already informed EPA about their plans to make these changes in a time-effective manner, a SIP call would not spur any action that is not already occurring.

Neither this action nor the Tailoring Rule triggered GHG permitting for any state. The Light Duty Vehicle Rule, in conjunction with the operation of the Clean Air Act, has already triggered the applicability of PSD to GHG emitting sources.

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, even if APA section 553 were to apply, APA section 553(d) provides an exception for any action that grants or recognizes an exemption or relieves a restriction. Since the effect of this rule will be to relieve many small sources (and permitting authorities) from certain PSD obligations, EPA believes that an immediate effective date is consistent with the purposes under APA section 553(d). EPA believes there is good cause for an immediate effective date due to the regulatory confusion that would result if states were federally required to implement PSD GHG permitting at only the statutory thresholds starting on January 2, 2010. In addition, since this is not a major rule under the Congressional Review Act, the 60-day delay in effective date required for major rules under the CRA does not apply. This rule is thus effective immediately.

VII. Statutory and Executive Orders

A. Executive Order 12866—Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Instead, this action 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 80,000 new and modified facilities per year, nationally, would be subject to PSD review based on applying a GHG emissions threshold of 100/250 tpy using a CO_2e metric. This was compared with the 280 PSD permits currently issued per year. Thus, without the final Tailoring Rule, the administrative burden for permitting GHG emissions would increase 280-fold, an unmanageable increase. The current action takes further steps to implement the burden-reduction implemented by the final Tailoring Rule.

In addition, OMB has previously approved the information collection requirements contained in the existing regulations for PSD (*see, e.g.,* 40 CFR 52.21) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0003. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA 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 final action on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. SBA size standards (see 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

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

We have therefore concluded that this final rule will relieve the federal regulatory burden for most affected small entities associated with the major PSD permit programs for new or modified major sources that emit GHGs, including small businesses, in the affected states. This is because this rule narrows its approval of SIPs in affected states so as to raise the approved PSD applicability thresholds for sources that emit GHGs. As a result, the program changes provided in this rule are not expected to result in a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any 1 year. No state will have an increased burden as a result of this rule; any burden related to amending state SIPs to incorporate different GHG emissions thresholds resulted from the final Tailoring Rule, not the current rule. Thus, this rule is not subject to the requirements of sections 202 or 205 of Unfunded Mandates Reform Act (UMRA).

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule is expected to result in cost savings and an administrative burden reduction for all permitting authorities and permittees in the affected states, including small 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 final rule will ultimately simplify and reduce the burden on state and local agencies associated with implementing the PSD permit program, by ensuring that, in affected states, a source whose GHG emissions are below the final Tailoring Rule thresholds will not have to obtain a PSD permit under federal law. 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 comments on the proposed rule from state and local officials. EPA has also consulted with the National Association of Clean Air Agencies and representatives from some individual states in developing this rule.

F. Executive Order 13175—Consultation and Coordination With Indian 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 currently issuing major NSR permits; however, this may change in the future.

EPA consulted with tribal officials early in the process of developing the final Tailoring Rule regulation, which the current rule helps to implement, to allow them to have meaningful and timely input into its development. Prior to publishing the proposed Tailoring Rule, EPA published an advance notice of proposed rulemaking (ANPR) that included GHG tailoring options for regulating GHGs under the CAA. (73 FR 44354, July 30, 2008). As a result of the ANPR, EPA received several comments from tribal officials on differing GHG tailoring options presented in the ANPR which were considered in the proposed Tailoring Rule and final Tailoring Rule. Additionally, EPA also specifically solicited comment from tribal officials on the proposed Tailoring Rule (74 FR 55292, October 27, 2009) in which the actions which EPA now takes were first proposed.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive 492 Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects because this action would not create any new requirements for sources in the energy supply, distribution, or use sectors.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs 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 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 CAA. Specifically, without this rule, the affected states' CAA PSD 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 narrowing 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 PSD 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 SBREFA, 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

Section 307(b)(1) of the CAA specifies which Federal Courts of Appeal have jurisdiction to hear petitions for review of which 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 EPA's previous approvals of SIPs in 24 states to correct a flaw in those SIPs is "nationally applicable" within the meaning of section 307(b)(1). The circumstances that have led to this rulemaking are national in scope and are substantially the same for each affected state. They include EPA's promulgation of nationally applicable GHG requirements that, in conjunction with the operation of the CAA PSD provisions, have resulted in GHG-emitting sources becoming subject to PSD. Moreover, in this rule, EPA is applying uniform principles for each affected state in this rule. At the core of this rulemaking is EPA's recognition that when it approved each of the affected SIPs' PSD applicability provisions, it did so in the face of a mismatch—common to each SIP—between the breadth of those provisions and the scope of the resource assurances the states provided. EPA is now addressing this flaw in numerous SIPs across the country through the CAA section 110(k)(6) error correction provisions. EPA's analytical approach for each SIP is the same, its determination that each SIP was flawed and therefore that EPA erred in its approval of each SIP is the same, and EPA's remedial action of rescinding its previous approval of part of the SIP and thereby narrowing its approval of the SIP is the same. This rulemaking action is supported by a single administrative record, and does not involve factual questions unique to the different affected states. In addition, this rule applies to multiple States in numerous judicial circuits across the country.

For similar reasons, this rule is based on determinations of nationwide scope or effect. EPA uses a uniform legal interpretation in all the affected States across the country; for the same reasons in each case, EPA is determining that each SIP was flawed and that EPA therefore erred in approving it. Similarly, EPA is determining that the appropriate remedial action is to rescind its approval in part and thereby narrow its approval, and this too is the same for each state. Because the states are spread across the nation, each of these determinations is nationwide in scope or effect. Moreover, EPA is making these determinations and promulgating this action within the context of nationwide rulemakings and interpretation of the applicable CAA provisions, as noted above.

Thus, any 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. 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 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).

VIII. Statutory Authority

The statutory authority for this action is provided by sections 101, 110, and 301 of the CAA as amended (42 U.S.C. 7401, 7410, and 7601). This action is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects in 40 CFR Part 52

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

Dated: December 23, 2010.

Lisa P. Jackson,

Administrator.

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

PART 52—[AMENDED]

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

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

Subpart B—Alabama

■ 2. Section 52.53 is revised to read as follows:

§ 52.53 Approval Status.

(a) With the exceptions set forth in this subpart, the Administrator approves Alabama's plans for the attainment and maintenance of the national standards under section 110 of the Clean Air Act. Furthermore, the Administrator finds the plans satisfy all requirements of Part D, Title I, of the Clean Air Act as amended in 1977. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by July 1, 1980 for the sources covered by CTGs issued between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

(b)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas

(GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in EPA-approved Alabama Department of Environmental Management (ADEM) Rules 335–3–14–.04(1)(d) thru (i) and 335–3–14–.04(2)(u)) and a significant net emissions increase (as defined in EPA-approved Alabama Department of Environmental Management (ADEM) Rules 335–3–14–.04(2)(c) and 335–3–14–.04(2)(w)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in Alabama Department of Environmental Management (ADEM) Rules 335–3–14–.04(2)(w).

Subpart F—California

■ 3. Section 52.223 is amended by adding paragraphs (f), (g), and (h) to read as follows:

§ 52.223 Approval status.

* * * * *

(f)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in North Coast Unified Air Quality Management District's approved plan apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in the EPA-approved North Coast Unified Air Quality Management District rules at R1–1–130(s2)) and a significant net emissions increase (as defined in the North Coast Unified Air Quality Management District rules at R1–1–130(n1)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in the EPA-approved North Coast Unified Air Quality Management District rules at R1–1–130(s2).

(g)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in Northern Sonoma County Air Pollution Control District's approved plan apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in the EPA-approved Northern Sonoma County Air Pollution Control District rules at R1–1–130(s2)) and a significant net emissions increase (as defined in the Northern Sonoma County Air Pollution Control District rules at R1–1–130(n1)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in the EPA-approved Northern Sonoma County Air Pollution Control District rules at R1–1–130(s2).

(h)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in Mendocino County Air Quality Management District's approved plan apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in the EPA-approved Mendocino County Air Quality Management District rules at R1–1–130(s2)) and a significant net emissions increase (as defined in the Mendocino County Air Quality Management District rules at R1–1–130(m1) (1982)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in the EPA-approved Mendocino County Air Quality Management District rules at R1–1–130(s2).

Subpart G—Colorado

■ 4. Section 52.323 is revised to read as follows:

§ 52.323 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves Colorado's plan for the attainment and maintenance of the national standards under section 110 of the Clean Air Act. Furthermore, the Administrator finds that the plan satisfies all requirements of Part D, Title 1, of the Clean Air Act as amended in 1977, except as noted below.

(b)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) the term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) the term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) the term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in paragraphs I.A.2. through I.A.3, and I.B of Part D of Colorado's Air Quality Commission's Regulation Number 3) and a significant net emissions increase (as defined in paragraphs II.A.26 and II.A.42.a of Part D of Colorado's Air Quality Commission's Regulation Number 3) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in paragraph II.A.42.b of Part D of Colorado's Air Quality Commission's Regulation Number 3.

Subpart L—Georgia

■ 5. Section 52.572 is revised to read as follows:

§ 52.572 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves Georgia's plans for the attainment and maintenance of the national standards under section 110 of the Clean Air Act. Furthermore, the Administrator finds the plans satisfy all requirements of Part D, Title I, of the Clean Air Act as amended in 1977, except as noted below.

(b)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv) (2006) and the EPA-approved Georgia Environmental Protection Division (EPD) Rules 391–3–1–.02(7)(a)2.(I) thru (IV) (2006)) and a significant net emissions increase (as defined in 40 CFR 52.21(b)(3) and (b)(23)(i) (2006)) occur. 40 CFR 52.21 (2006) is presently incorporated by reference into Georgia's approved plan at EPA-approved Georgia EPD Rule 391–3–1–.02(7). For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 40 CFR 52.21(b)(23)(ii).

Subpart P—Indiana

■ 6. Section 52.773 is amended by adding paragraph (k) to read as follows:

§ 52.773 Approval status.

* * * * *

(k)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (k), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (k)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (k)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (k)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the

procedures in [326 IAC–2–2–2(d) of Indiana's Administrative Code) and a significant net emissions increase (as defined in 326 IAC–2–1, paragraphs (ii) and (ww) of Indiana's Administrative Code) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in paragraph 326 IAC 2–2–1(ww)(1)(V) of Indiana's Administrative Code.

Subpart Q—Iowa

■ 7. Section 52.822 is amended by adding paragraph (b) to read as follows:

§ 52.822 Approval status.

* * * * *

(b)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv)) and a significant net emissions increase (as defined in 40 CFR 52.21(b)(3) and (b)(23)(i)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 40 CFR 52.21(b)(23)(ii) of this section.

Subpart T—Louisiana

■ 8. Section 52.986 is amended by adding paragraph (c) to read as follows:

§ 52.986 Significant deterioration of air quality.

* * * * *

(c)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in Louisiana's approved plan apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (c), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (c)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (c)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (c)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in the EPA-approved Louisiana Administrative Code (LAC), Title 33, Part III, Chapter 5, Section 509, Subsection B) and a significant net emissions increase (as defined in LAC 33:III.509.B) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in the EPA-approved definition of "significant" at LAC 33:III.509.B.

Subpart U—Maine

■ 9. Section 52.1022 is revised to read as follows:

§ 52.1022 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves Maine's plan, as identified in § 52.1020, for the attainment and maintenance of the national standards under section 110 of the Clean Air Act.

(b)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas

(GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) the term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in 06–096 1. of Chapter 100 of Maine's Bureau of Air Quality Control regulations) and a significant net emissions increase (as defined in 06–096, paragraphs 89 and 144 A of Chapter 100 of Maine's Bureau of Air Quality Control regulations) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 06–096, paragraphs 143 and 144 D of Chapter 100 of Maine's Bureau of Air Quality Control regulations.

Subpart V—Maryland

■ 10. Section 52.1073 is amended by adding paragraph (h) to read as follows:

§ 52.1073 Approval status.

* * * * *

(h)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (h), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (h)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (h)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (h)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that a net significant emissions increase (as defined in 40 CFR part 52.21(b)(3)(i) (2000) and the EPA-approved Maryland rules at COMAR 26.11.06.14 (state effective date 10/10/2001)). For the pollutant GHGs, a net emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 40 CFR 52.21(b)(23)(ii) (2000).

Subpart Z—Mississippi

■ 11. Section 52.1272 is revised to read as follows:

§ 52.1272 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves Mississippi's plan for the attainment and maintenance of national standards under section 110 of the Clean Air Act. Furthermore, the Administrator finds the plans satisfy all requirements of Part D, Title I, of the Clean Air Act as amended in 1977.

(b)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation," as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of

this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv) (2007)) and a significant net emissions increase (as defined in paragraphs 40 CFR 52.21(b)(3) and (b)(23)(i) (2007)) occur. 40 CFR 52.21 (2007) is presently incorporated by reference into Mississippi's plan at EPA-approved Mississippi Commission on Environmental Quality Rule APC–S–5. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 40 CFR 52.21(b)(23)(ii)(2007).

Subpart AA—Missouri

■ 12. Section 52.1323 is amended by adding paragraph (n) to read as follows:

§ 52.1323 Approval status.

* * * * *

(n)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation," as provided in this paragraph (n), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (n)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (n)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (n)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv)) and a significant net emissions increase (as defined in 40 CFR 52.21(b)(3) and (b)(23)(i)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 40 CFR 52.21(b)(23)(ii).

Subpart EE—New Hampshire

■ 13. Section 52.1522 is amended by adding paragraph (c) to read as follows:

§ 52.1522 Approval status.

* * * * *

(c)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (c), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (c)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (c)—

(i) the term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to

subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (c)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) the term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv)) and a significant net emissions increase (as defined in paragraphs 40 CFR 52.21(b)(3) and (b)(23)(i)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 40 CFR 52.21(b)(23)(ii).

Subpart GG—New Mexico

■ 14. Section 52.1634 is amended by adding paragraphs (d) and (e) to read as follows:

§ 52.1634 Significant deterioration of air quality.

* * * * *

(d)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in New Mexico's approved plan apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) the term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) the term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in the EPA-approved New Mexico Environment Department (NMED) rules at New Mexico Administrative Code (NMAC) 20.2.74.200, Subsection D) and a significant net emissions increase (as defined in the EPA-approved NMED rules at NMAC 20.2.74.7, paragraphs (AK), (AV), and (AW)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in the EPA-approved NMED rules at Table 2 of NMAC 20.2.74.502.

(e)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in Bernallilo County/City of Albuquerque's approved plan apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) the term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in the EPA-approved Bernallilo County/City of Albuquerque rules at NMAC 20.11.61.11, Subsection D) and a significant net emissions increase (as defined in the EPA-approved Bernanillo County/City of Albuquerque rules at NMAC 20.11.61.7, paragraphs (OO), (YY), and (ZZ)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in the EPA-approved Bernallilo County/City of Albuquerque rules at Table 2 of NMAC 20.11.61.27.

Subpart II—North Carolina

■ 15. Section 52.1772 is amended by adding paragraph (c) to read as follows:

§ 52.1772 Approval status.

* * * * *

(c)(1) Insofar as the Prevention of Significant Deterioration (PSD)

provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (c), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (c)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (c)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (c)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that a significant net emissions increase (as defined in paragraphs 40 CFR 51.166(b)(3) (1996) and 40 CFR 51.166(b)(23)(i) (1996)) occurs. 40 CFR 51.166 (1996) is presently incorporated by reference into North Carolina's plan at EPA-approved North Carolina Rule 15A NCAC 02D–.544. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 40 CFR 51.166(b)(23)(ii) (1996).

Subpart KK—Ohio

■ 16. Section 52.1873 is revised to read as follows:

§ 52.1873 Approval status.

(a) With the exceptions set forth in this subpart the Administrator approves Ohio's plan for the attainment and maintenance of the National Ambient Air Quality Standards under section 110 of the Clean Air Act. Furthermore, the Administrator finds the plan satisfies all the requirements of Part D, Title 1 of the Clean Air Act as amended in 1977, except as noted below. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by January 1, 1981 for the sources covered by CTGs between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

(b)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) the term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in 3745–31–01(III)(4) of Ohio's Administrative Code) and a significant net emissions increase (as defined in paragraphs 3745–31–01, paragraphs (SSS) and (LLLLL)(1) of Ohio's Administrative Code) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in paragraph 3745–31–01(LLLLL)(2) of Ohio's Administrative Code.

Subpart LL—Oklahoma

■ 17. Section 52.1929 is amended by adding paragraph (c) to read as follows:

§ 52.1929 Significant deterioration of air quality.

* * * * *

(c)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in Oklahoma's approved plan apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the

Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) the term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) the term emissions increase shall mean that both a significant emissions increase (as calculated using EPA-approved procedures in Oklahoma Air Pollution Control Regulation 1.4.4(b)) and a significant net emissions increase (as defined in the EPA-approved Oklahoma Air Pollution Control Regulation 1.4.4(b)(3) and (22), definitions for "net emissions increase" and "significant) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 1.4.4(b)(22) of the EPA-approved definition for "significant" of Oklahoma's Air Pollution Control Regulations.

Subpart OO—Rhode Island

■ 18. Section 52.2072 is revised to read as follows:

§ 52.2072 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves Rhode Island's plan, as identified in § 52.2070 of this subpart, for the attainment and maintenance of the national standards under section 110 of the Clean Air Act. Furthermore, the Administrator finds the plan satisfies all requirements of Part D, Title I, of the Clean Air Act, as amended in 1977, except as noted below. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by January 1, 1981 for the sources covered by CTGs issued between January 1978 and January 1979 and adoption and submittal by each subsequent January as additional RACT requirements for sources covered by CTGs issued by the previous January.

(b)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) the term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) the term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in 9.1.1 of Rhode Island's Air Pollution Control Regulation No. 9) and a significant net emissions increase (as defined in 9.1.24 and 9.1.34 of Rhode Island's Air Pollution Control Regulation No. 9) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value for "any other pollutant" in 9.1.34 of Rhode Island's Air Pollution Control Regulation No. 9.

Subpart PP—South Carolina

■ 19. Section 52.2122 is amended by adding paragraph (c) to read as follows:

§ 52.2122 Approval status.

* * * * *

(c)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (c), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (c)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (c)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (c)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in South Carolina Air Pollution Control Regulations and Standards (South Carolina Regulations) 61–62.5, Standard No. 7, paragraph (a)(2)(iv)) and a significant net emissions increase (as defined in South Carolina Air Pollution Control Regulations and Standards (South Carolina Regulations) 61–62.5, Standard No. 7, paragraphs (b)(34) and (b)(49)(i)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in South Carolina Air Pollution Control Regulations and Standards (South Carolina Regulations) 61–62.5, Standard No. 7, paragraph (b)(49)(ii).

Subpart QQ—South Dakota

■ 20. Section 52.2172 is revised to read as follows:

§ 52.2172 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves South Dakota's plan as meeting the requirements of section 110 of the Clean Air Act, as amended in 1977. Furthermore, the Administrator finds that the plan satisfies all requirements of Part D of the Clean Air Act, as amended in 1977.

(b)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv)) and a significant net emissions increase (as defined in paragraphs 40 CFR 52.21(b)(3) and (b)(23)(i)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 40 CFR 52.21(b)(23)(ii).

Subpart RR—Tennessee

■ 21. Section 52.2222 is amended by adding paragraph (d) to read as follows:

§ 52.2222 Approval status.

* * * * *

(d)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (d), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (d)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (d)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (d)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in Tennessee Air Pollution Control Regulation 1200–03–09–.01(4)(c)(4) and a significant net emissions increase (as defined in Tennessee Air Pollution Control Regulation 1200–03–09–.01, paragraphs (4)(b)(4) and (4)(b)(24)(i)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in Tennessee Air Pollution Control Regulation 1200–03–09–.01, paragraph (4)(b)(24)(ii).

Subpart TT—Utah

■ 22. Section 52.2323 is revised to read as follows:

§ 52.2323 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves Utah's plan as meeting the requirements of section 110 of the Clean Air Act as amended in 1977. Furthermore, the Administrator finds that the plan satisfies all requirements of Part D, Title 1, of the Clean Air Act as amended in 1977, except as noted below.

(b)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) the term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv)) and a significant net emissions increase (as defined in paragraphs 40 CFR 52.21(b)(3) and (b)(23)(i)) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 40 CFR 52.21(b)(23)(ii).

Subpart UU—Vermont

■ 23. Section 52.2372 is revised to read as follows:

§ 52.2372 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves Vermont's plan as identified in § 52.2370 for the attainment and maintenance of the national standards under section 110 of the Clean Air Act. Furthermore, the Administrator finds the plans satisfy all requirements of Part D, Title I, of the Clean Air Act, as amended in 1977, except as noted below. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by July 1, 1980 for the sources covered by CTGs issued between January, 1978 and January, 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

(b)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in the definitions for "actual emissions" and "allowable emissions" under section 5–101 of Chapter 5, subchapter I of Vermont's Air Pollution Control Environmental Protection regulations) and a significant net emissions increase (as defined in the definitions for "significant" under section 5–101 of Chapter 5, subchapter I of Vermont's Air Pollution Control Environmental Protection regulations) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in the definition of "major modification" under section 5–101 of Chapter 5, subchapter I of Vermont's Air Pollution Control Environmental Protection regulations.

Subpart VV—Virginia

■ 24. Section 52.2423 is amended by adding paragraph (t) to read as follows:

§ 52.2423 Approval status.

* * * * *

(t)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (t), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (t)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (t)—

(i) the term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (t)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in 9 VAC 5–80–1605 G of the Commonwealth of Virginia's Administrative Code) and a significant net emissions increase (as defined in the definitions for "net emissions increase," "significant" subparagraph a., and "significant emissions increase" under 9 VAC 5–80–1605 C of the Commonwealth of Virginia's Administrative Code) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value specified in the definition for "significant" subparagraph b. under 9 VAC 5–80–1605 C of the Commonwealth of Virginia's Administrative Code.

Subpart YY—Wisconsin

■ 25. Section 52.2572 is revised to read as follows:

§ 52.2572 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves Wisconsin's plans for the attainment and maintenance of the National Ambient Air Quality Standards under section 110 of the Clean Air Act. Furthermore, the Administrator finds the plans satisfy all requirements of Part D, Title I, of the Clean Air Act as amended in 1977, except as noted below. In addition, continued satisfaction of the requirements of Part D for the Ozone portion of the State Implementation Plan depends on the adoption and submittal of RACT requirements on:

(1) Group III Control Techniques Guideline sources within 1 year after January 1st following the issuance of each Group III control technique guideline; and

(2) Major (actual emissions equal or greater than 100 tons VOC per year) non-control technique guideline sources in accordance with the State's schedule contained in the 1982 Ozone SIP revision for Southeastern Wisconsin.

(b)(1) Insofar as the Prevention of Significant Deterioration (PSD) provisions found in this subpart apply to stationary sources of greenhouse gas (GHGs) emissions, the Administrator approves that application only to the extent that GHGs are "subject to regulation", as provided in this paragraph (b), and the Administrator takes no action on that application to the extent that GHGs are not "subject to regulation."

(2) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

(ii) The stationary source is an existing major stationary source for a

regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more; and,

(3) Beginning July 1, 2011, in addition to the provisions in paragraph (b)(2) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(4) For purposes of this paragraph (b)—

(i) The term greenhouse gas shall mean the air pollutant defined in 40 CFR 86.1818–12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ii) The term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A–1 to subpart A of 40 CFR part 98—Global Warming Potentials.

(B) Sum the resultant value from paragraph (b)(4)(ii)(A) of this section for each gas to compute a tpy CO_2e.

(iii) The term emissions increase shall mean that both a significant emissions increase (as calculated using the procedures in NR 405.025 of Wisconsin's Administrative Code) and a significant net emissions increase (as defined in NR 405.02, paragraphs (24), (27)(a), and (27m) of Wisconsin's Administrative Code) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in NR 405.02(27)(c) of Wisconsin's Administrative Code.

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