V. Statutory Authority

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

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

List of Subjects in 40 CFR Part 52

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

Dated: August 12, 2010.

Lisa P. Jackson,

Administrator.

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

PART 52—[AMENDED]

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

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

2. Section 52.37 is added to read as follows:

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

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

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

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

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

(1) Alaska;

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

(3) Arkansas;

(4) California, Sacramento Metropolitan AQMD;

(5) Connecticut;

(6) Florida;

(7) Idaho;

(8) Kansas;

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

(10) Nebraska;

(11) Nevada, Clark County;

(12) Oregon;

(13) Texas.

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

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

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2010–0107; FRL–9190–7]

RIN–2060–AQ08

Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

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

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

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

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

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0107. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The

http://www.regulations.gov Web Site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to section I.C of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Sutton, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–3450; fax number: (919) 541–5509; e-mail address: *sutton.lisa@epa.gov*.

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

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

I. General Information

A. Does this action apply to me?

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

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

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

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

action are expected to be in the following groups:

Industry group	NAICS [a]
Utilities (electric, natural gas, other systems)	2211, 2212, 2213.
Manufacturing (food, beverages, tobacco, textiles, leather)	311, 312, 313, 314, 315, 316.
Wood product, paper manufacturing	321, 322.
Petroleum and coal products manufacturing	32411, 32412, 32419.
Chemical manufacturing	3251, 3252, 3253, 3254, 3255, 3256, 3259.
Rubber product manufacturing	3261, 3262.
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551.
Nonmetallic mineral product manufacturing	3271, 3272, 3273, 3274, 3279.
Primary and fabricated metal manufacturing	3311, 3312, 3313, 3314, 3315, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329.
Machinery manufacturing	3331, 3332, 3333, 3334, 3335, 3336, 3339.
Computer and electronic products manufacturing	3341, 3342, 3343, 3344, 3345, 4446.
Electrical equipment, appliance, and component manufacturing	3351, 3352, 3353, 3359.
Transportation equipment manufacturing	3361, 3362, 3363, 3364, 3365, 3366, 3366, 3369.
Furniture and related product manufacturing	3371, 3372, 3379.
Miscellaneous manufacturing	3391, 3399.
Waste management and remediation	5622, 5629.
Hospitals/nursing and residential care facilities	6221, 6231, 6232, 6233, 6239.
Personal and laundry services	8122, 8123.
Residential/private households	8141.
Non-residential (commercial)	Not available. Codes only exist for private households, construction and leasing/sales industries.

[a] North American Industry Classification System.

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

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

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

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

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

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

D. How is the preamble organized?

The information presented in this preamble is organized as follows:

II. Overview of Proposed Rule

In this rulemaking, along with the companion rulemaking described elsewhere in this preamble, EPA is taking another in a series of actions concerning the PSD program for GHG-emitting sources that will begin on January 2, 2011. These two rulemakings take steps to assure that in 13 States that do not appear to have authority to issue PSD permits to GHG-emitting sources at present, either the State or EPA will have the authority to issue PSD permits by January 2, 2011. Although for most states, either the State or EPA is already authorized to issue PSD permits for GHG-emitting sources as of that date, our preliminary information shows that these 13 States have EPA-approved PSD programs that do not appear to include GHG-emitting sources and therefore do not appear to authorize these states to issue PSD permits to such sources. In this rulemaking, EPA proposes to find that these 13 States' SIPs are substantially inadequate to comply with CAA requirements and, accordingly, proposes to issue a SIP Call to require a corrective SIP revision that applies their SIP PSD programs to GHG-emitting sources. In a companion rulemaking, EPA proposes a FIP that would give EPA authority to apply EPA's PSD program to GHG-emitting sources in case such a State is unable to submit a corrective SIP revision by its deadline.

Under the CAA PSD program, 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), 169(1). The permit must, among other things, impose emission limitations associated with the best available control technology (BACT). CAA section 165(a)(4).

In recent months, EPA has taken four related actions that, taken together, trigger PSD applicability for GHG sources on and after January 2, 2011, but limit the scope of PSD. These actions included, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which were issued in a single final action,[3] the "Johnson Memo Reconsideration," [4] the "Light-Duty Vehicle Rule," [5] and the "Tailoring Rule." [6] Taken together, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines, determined that such regulations, when they take effect on January 2, 2011, will subject GHGs emitted from stationary sources to PSD requirements, and limited the applicability of PSD requirements to GHG sources on a phased-in basis.

We are taking this action on the basis of: Our analysis of the affected States' SIP provisions and other relevant State law; the States' analyses of their SIP provisions and State law, as indicated in letters sent to us as required under the Tailoring Rule; [7] and direct consultation with the individual states and with the National Association of Clean Air Agencies (NACAA). As further described in section IV.D of this preamble, EPA compiled relevant provisions of the affected States' SIPs and other State law into a Technical Support Document for this rulemaking, which can be found in the docket for this rulemaking. Our analysis, along with information received from consulting with the states, indicates that the EPA-approved SIPs for 13 States appear to not apply the PSD program to GHG sources. In many of these states, the SIP applicability provisions apply the PSD program to sources of specifically listed air pollutants and do not include GHGs. In one State, Connecticut, the SIP explicitly precludes the application of PSD to GHG-emitting sources. In other states, the SIP applicability provisions apply the PSD program generally to regulated pollutants, and these provisions, by their terms, cover GHGs; however, these states have other constitutional, State law, or SIP provisions that may limit their State laws or SIP requirements to applying only when specifically approved by the appropriate State authority. These constitutional or statutory provisions may limit the scope of the State PSD applicability provisions expressly to pollutants identified at a certain point in time as subject to PSD. For example, if the State has not yet expressly identified GHGs as subject to its PSD program, the authority to regulate GHG-emitting sources may not exist. As a result, absent further action, GHG sources that will be required to obtain a PSD permit for construction or modification on and after January 2, 2011, will be unable to obtain that permit and therefore may be unable to proceed with planned construction or modification in those states.

In this rulemaking, we are proposing to find that under CAA section 110(k)(5), the SIP for each of these 13 States is substantially inadequate to meet the CAA PSD requirements, and we are proposing a SIP Call to require that each affected State submit a corrective SIP revision that applies the PSD program to GHG sources. These states are listed in table IV–1, "States with SIPs that Do Not Appear to Apply PSD to GHG Sources (Presumptive SIP Call List)."

As for the remaining States with EPA-approved SIP PSD programs, our preliminary research indicates that their SIP PSD applicability provisions apply the PSD programs more broadly—for example, many apply to sources of "regulated NSR pollutants"—and therefore appear to include GHG-emitting sources. Moreover, we have not to this point received information about other provisions in the State constitutional or other State or SIP law that would have the effect of limiting the applicability of the PSD provisions to exclude GHG-emitting sources. Those remaining States, which include all the states with EPA-approved PSD programs not listed in table IV–1, are listed in table IV–2, "States with SIPs that Appear to Apply PSD to GHG Sources (Presumptive Adequacy List)."

Even so, we are aware of the possibility that some of those states may also have other State law provisions that may have the effect of limiting their PSD SIP requirements to applying only to pollutants specifically approved by the appropriate State authority, which would not include GHGs. In light of this possibility, we are soliciting comment on whether each of those remaining States' SIPs (*see* table IV–2) apply PSD to GHG-emitting sources. If, for any such State, we receive information that leads us to conclude that its SIP does not apply PSD to GHG-emitting sources, we will take final action to issue a

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

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

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

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

[7] In the Tailoring Rule, EPA asked states to advise EPA by letter, within 60 days of publication of the Tailoring Rule, how the states intended to implement the requirements of the Tailoring Rule, including whether the states had authority to apply their PSD program to GHG-emitting sources.

finding of substantial inadequacy and a SIP Call for that State, on the same schedule as that for the 13 States.

In a companion action to this rulemaking, we are proposing to promulgate, in any State that is not in a position to make a timely submittal of the corrective SIP revision, a FIP that will assure that sources will be able to obtain the necessary permits, with EPA as the permitting authority for GHG emissions.

In view of the need for prompt action to eliminate or significantly limit any time period during which certain GHG sources are precluded from constructing or modifying because no entity has the authority to issue them permits, we intend to finalize this rulemaking action on or about December 1, 2010, and we propose in this rulemaking to give states a deadline of 12 months from the date we finalize to submit their corrective SIP revision. However, we are also proposing to authorize states to accept a shorter deadline, as short as three weeks from the date we finalize. If any State is not able to submit a corrective SIP revision by its deadline, then EPA, by virtue of the authority of the FIP provisions under CAA section 110(c), will immediately make a finding that the State has failed to submit the required SIP revision and will immediately promulgate the FIP.

Some states may already be in the process of developing the legal authority needed and may be able to submit a SIP revision sooner than December 2010. EPA encourages states to take action as expeditiously as possible and will assist states as much as possible. Therefore, for each State for which EPA is proposing a SIP Call, it is possible that by January 2, 2011, when certain GHG sources in the State may be required to obtain PSD permits, the State would have the authority in place to act on the sources' permit applications. The availability of this authority to regulate GHGs would depend on whether the State submits a SIP revision before EPA finalizes this action or, alternatively, on which deadline the State receives for the corrective SIP submittal.

We ask that, within the comment period for this action, each of the states listed in table IV–1 confirm to EPA that its SIP does not apply the PSD program to GHG-emitting sources. We also ask that within this comment period, every other State in the nation with an approved SIP (*see* table IV–2) review its SIP and inform EPA if its SIP does not apply the PSD program to GHG-emitting sources. Further, we ask that the states (*see* table IV–1) for which we are proposing a SIP Call identify the deadline—between 3 weeks and 12 months from the date of signature of the final SIP Call—that they would accept for submitting their corrective SIP revision. For example, assuming that, as we anticipate, this rulemaking is signed in final form by December 1, 2010, a State may specify that it would accept a SIP submittal deadline that falls between December 22, 2010, and December 1, 2011, inclusive.

III. Background

A. CAA and Regulatory Context

EPA described the relevant background information in the Tailoring Rule. Knowledge of this background information is presumed and will be only briefly summarized here.

1. SIP PSD Requirements

Under the CAA PSD requirements, a new or existing source that emits or has the potential to emit "any air pollutant" in the amounts of either 100 or 250 tons per year (tpy), depending on the source category, cannot construct or modify unless it first obtains a PSD permit that, among other things, imposes emission limitations that qualify as BACT. CAA sections 165(a)(1), 165(a)(4), 169(1). Longstanding EPA regulations have interpreted the term "any air pollutant" narrowly so that only emissions of any "regulated NSR pollutant" trigger PSD. 40 CFR 51.166(j)(1), 52.21(j)(2). The term "regulated NSR pollutant" is defined to include the following four classes of air pollutants:

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

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

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

(iv) "any pollutant that otherwise is subject to regulation under the Act" (excluding HAPs listed under CAA section 112). 40 CFR 51.166(b)(49), 52.21(b)(50).

The CAA contemplates that the PSD program be implemented in the first instance by the states and requires that states include PSD requirements in their SIPs. CAA section 110(a)(2)(C) requires that—

> Each implementation plan * * * shall * * * include a program to provide for * * * regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in part[] C * * * of this subchapter.

CAA section 110(a)(2)(J) requires that—

> Each implementation plan * * * shall * * * meet the applicable requirements of * * * part C of this subchapter (relating to significant deterioration of air quality and visibility protection).

CAA section 161 provides that—

> Each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part [C], to prevent significant deterioration of air quality for such region * * * designated * * * as attainment or unclassifiable.

These provisions, read in conjunction with the PSD applicability provision—which, as noted above, applies, by its terms, to "any air pollutant," and which EPA has, through regulation, interpreted more narrowly as any "NSR regulated pollutant"—and read in conjunction with other provisions, such as the BACT provision under CAA section 165(a)(4), mandate that SIPs include PSD programs that are applicable to, among other things, any air pollutant that is subject to regulation, including, as discussed below, GHGs on and after January 2, 2011.[8]

A number of states do not have PSD programs approved into their SIPs. In those states, EPA's regulations at 40 CFR 52.21 govern, and either EPA or the State as EPA's delegatee acts as the permitting authority. On the other hand, most states have PSD programs that have been approved into their SIPs, and these states implement their PSD programs and act as the permitting authority. These approved SIPs are discussed in more detail below.

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

By notice dated December 15, 2009, pursuant to CAA section 202(a), EPA issued, in a single final action, two findings regarding GHGs that are commonly referred to as the "Endangerment Finding" and the "Cause or Contribute Finding." "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act," 74 FR 66496. In the Endangerment Finding, the Administrator found that six long-lived and directly emitted greenhouse gases—carbon dioxide (CO_2), methane (CH_4),

[8] In the Tailoring Rule, we noted that commenters argued, with some variations, that the PSD provisions applied only to NAAQS pollutants, and not GHGs, and we responded that the PSD provisions apply to all pollutants subject to regulation, including GHGs. *See* 75 FR 31560–62, "Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA's Response to Public Comments," May 2010, pp. 38–41. We maintain our position that the PSD provisions apply to all pollutants subject to regulation, and we incorporate by reference our discussion of this issue in the Tailoring Rule.

nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6)—may reasonably be anticipated to endanger public health and welfare. In the Cause or Contribute Finding, the Administrator "define[d] the air pollutant as the aggregate group of the same six * * * greenhouse gases," 74 FR 66536, and found that the combined emissions of this air pollutant from new motor vehicles and new motor vehicle engines contribute to the GHG air pollution that endangers public health and welfare.

By notice dated May 7, 2010, EPA published what is commonly referred to as the "Light-Duty Vehicle Rule" (LDVR), which for the first time established Federal controls on GHGs emitted from light-duty vehicles. "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324. In its applicability provisions, the LDVR specifies that it "contains standards and other regulations applicable to the emissions of six greenhouse gases," including CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. 75 FR 25686 (40 CFR 86.1818–12(a)).

Shortly before finalizing the LDVR, by notice dated April 2, 2010, EPA published a notice commonly referred to as the Johnson Memo Reconsideration, which interpreted the term "subject to regulation," a term that is one of the regulatory triggers for PSD applicability.[9] The Johnson Memo Reconsideration concluded that for GHGs, promulgation of the LDVR would trigger PSD applicability for GHG-emitting sources on or after January 2, 2011, which according to EPA is the date upon which the LDVR takes effect.

By notice dated June 3, 2010, EPA published what is commonly referred to as the "Tailoring Rule," [10] which limits the applicability of PSD through a multi-step phase-in approach to only the highest-emitting GHG-emitting sources for a specified period of time, and not all GHG-emitting sources at the 100/250-tpy statutory thresholds. The Tailoring Rule established the first two steps of the approach, which take effect on January 2, 2011, and July 1, 2011, respectively. In the Tailoring Rule, EPA codified the Johnson Memo Reconsideration interpretation of the term "subject to regulation" and added a further interpretation of that term designed to expedite the adoption of the phase-in approach for PSD permitting for GHGs by the states into their SIPs. In addition, in the Tailoring Rule, EPA identified the air pollutant that, if emitted or potentially emitted by the source in excess of specified thresholds, would subject the source to PSD requirements, as the aggregate of the six GHGs, again, CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. The Tailoring Rule further provided that for purposes of determining whether the GHGs emitted (or potentially emitted) exceeded the specified thresholds, the amount of the GHGs must be calculated first on a mass emissions basis and then on a carbon dioxide equivalent (CO_2e) basis. With respect to the latter, according to the rule, "PSD * * * applicability is based on the quantity that results when the mass emissions of each of these [six] gases is multiplied by the Global Warming Potential (GWP) of that gas, and then summed for all six gases." 75 FR 31518. In the Tailoring Rule, we asked states to submit to us letters within 60 days of publication describing how they intended to incorporate into their SIPs the limitations on PSD applicability included in the rule's phase-in approach.

Further information on the Endangerment and Cause or Contribute Findings, the LDRV, the Johnson Memo Reconsideration, and the Tailoring Rule is contained in the Tailoring Rule.

3. SIP Inadequacy and Corrective Action

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

(5) Calls for plan revisions

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

This provision by its terms authorizes the Administrator to "find[] that [a SIP] * * * is substantially inadequate to * * * comply with any requirement of this Act," and, based on that finding, to "require the State to revise the [SIP] * * * to correct such inadequacies." This latter action is commonly referred to as a "SIP Call." In addition, this provision provides that EPA must notify the State of the substantial inadequacy and authorizes EPA to establish a "reasonable deadline[] (not to exceed 18 months after the date of such notice)" for the submission of the corrective SIP revision.

If the State fails to submit the corrective SIP revision by the deadline, CAA section 110(c) authorizes EPA to "find[] that [the] State has failed to make a required submission." CAA section 110(c)(1)(A). Once EPA makes that finding, CAA section 110(c)(1) requires EPA to "promulgate a Federal implementation plan at any time with 2 years after the [finding] * * * unless the State corrects the deficiency, and [EPA] approves the plan or plan revision, before [EPA] promulgates such [FIP]."

B. State PSD SIPs

1. SIP PSD Applicability Provisions

As noted earlier in this preamble, most states have approved PSD SIPs. Most of those SIPs identify the pollutants addressed under their PSD program as any "regulated NSR pollutant." This definition covers any "pollutant subject to regulation" and therefore, by its terms, in effect is automatically updating and needs no revision in order to cover pollutants that become subject to regulation under the CAA. As a result, these provisions cover GHG emissions when they become subject to regulation under other provisions of the CAA. *See* 40 CFR 52.21(b)(50).

However, EPA has become aware that a minority of approved SIPs fail to include this broad approach to identifying pollutants subject to PSD and instead simply list the individual pollutants by name. These SIPs do not identify GHGs as among the pollutants addressed under their PSD program. As a result, these applicability provisions, by their terms, do not appear to apply the PSD requirements to sources of GHGs when GHGs become "subject to regulation" under the CAA on January 2, 2011.

In addition, the PSD SIP applicability provisions of one State that we are aware of, Connecticut, explicitly excludes CO_2 as an "air pollutant," so that CO_2 is not subject to PSD requirements.

2. Other Relevant State Law Provisions

Some states may have other State laws, including other SIP provisions that bear upon the applicability of their PSD programs to GHG-emitting sources.

First, some states may have in their SIPs some sort of "general authority clause" that affirms the State's legal authority to issue, and enforce

[9] "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs," 75 FR 17004 (finalizing 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).

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

compliance with, permits that are consistent with Federal requirements. If one of the states listed in table IV–1 of this preamble as having a SIP that does not explicitly apply PSD to GHG emitters nevertheless has such a "general authority clause," then the SIP, read as a whole, may be considered to apply PSD to GHG sources.

For an example of the type of "general authority clause" that may have this effect, we refer to correspondence between the California Bay Area Air Quality Management District (BAAQMD) and EPA Region IX that is included in the docket for this rulemaking. In a letter dated October 28, 2009, the BAAQMD proposed to exercise general authority in order to issue air permits to sources of $PM_{2.5}$ even though its air permit regulations did not contain specific provisions for $PM_{2.5}$ emissions. Under the proposed approach, with which EPA concurred, BAAQMD exercised general authority under the administrative requirements within its air permit regulations, which provide that the Air Pollution Control Officer "may impose any permit condition that he deems reasonably necessary to insure compliance with Federal or California law or District regulations * * *." *See* Regulation 2–1–403 included in the docket for this rulemaking.

Second, some states may have, in their SIPs, statutes, or constitutions, a provision that precludes "forward adoption," that is, that prevents the State law from incorporating by reference or otherwise adopting any requirements not specifically adopted by the State legislature or other State authority. In particular, some states may include a SIP PSD applicability provision that incorporates by reference (IBR) our Federal PSD rule at 40 CFR 52.21—including the definition of "regulated NSR pollutant"—but that further provides that this IBR is not "rolling" and therefore is limited to only pollutants identified as regulated NSR pollutants as of the date the State adopted the PSD provision. Any of these provisions could limit the SIP PSD applicability rule to only the pollutants that were regulated as of the time the State adopted the PSD applicability rule, which means the SIP PSD program would not cover GHG-emitting sources until the State took specific action to that effect.

IV. Proposed Action: Finding of Substantial Inadequacy and SIP Call

A. Introduction

Beginning on January 2, 2011, certain stationary sources that construct or undertake modifications will become subject to the CAA requirement to obtain a PSD permit for their GHG emissions. This is because of the following CAA statutory and EPA regulatory requirements: Under CAA sections 165(a) and 169(1), as interpreted through longstanding EPA regulations, PSD applies to sources that emit specified amounts of "regulated NSR pollutants," which include specified air pollutants as well any other "[air] pollutant" that is "subject to regulation." 40 CFR 51.166(j)(1), (b)(49)(iv). By notice dated May 7, 2010, EPA promulgated the Light-Duty Vehicle Rule (LDVR), which establishes requirements for GHGs. 75 FR 25324. By the terms of the LDVR, these emission limits take effect on January 2, 2011. The LDVR identified the GHGs to which it applies as a single air pollutant that consists of CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. The LDVR followed EPA's Endangerment and Cause or Contribute Findings, issued by notice dated December 15, 2009, by which EPA found that GHGs—defined to include the same six constituents—may reasonably be anticipated to endanger public health and welfare. By notice dated April 2, 2010, EPA promulgated the Johnson Memo Reconsideration. 75 FR 17004. In this action, EPA made clear that the regulation of GHGs by the LDVR will trigger the applicability of PSD requirements to GHG-emitting stationary sources as of January 2, 2011, because GHGs will become "subject to regulation" through the LDVR. By notice dated June 3, 2010, EPA promulgated the Tailoring Rule, which narrows PSD applicability to specified GHG-emitting sources on a specified phase-in schedule and makes clear that GHGs—defined as the same single pollutant, with six constituent gases, as described in the LDVR—are the "[air] pollutant" to which PSD requirements apply. 75 FR 31514. Pursuant to the Tailoring Rule, PSD permitting requirements for construction or modification will apply to certain GHG-emitting stationary sources beginning on January 2, 2011, for the first step of the Tailoring Rule, and beginning on July 1, 2011, for the second step of the Tailoring Rule.

A number of states do not have an approved PSD SIP; as a result, in these states [11] the applicable regulatory authority is EPA's regulations, found in 40 CFR 52.21, which constitute a FIP. For sources in these states, either the EPA Regional Office or the State acting as EPA's delegatee is the permitting authority. Because EPA's regulations apply directly, sources in these states that emit GHGs will become subject to PSD for their GHG emissions, to the extent provided under the Tailoring Rule, on January 2, 2011. These sources will be able, on and after January 2, 2011, to apply for and receive in due course their PSD permits either from EPA directly or from those State permitting authorities acting on EPA's behalf.

All of the other states administer their PSD program through an approved SIP and, as a result, they or their local entities are the PSD permitting authority. This rulemaking concerns whether those approved SIP PSD programs include GHG-emitting sources and, for those that do not, the steps that EPA will take to assure that a PSD permit program that includes GHGs is in place.

B. States With SIP PSD Applicability Provisions That Do Not Appear To Apply to GHG-Emitting Sources

Our review of the SIPs and other authorities, as well as consultation with states, as described further in section IV.D of this preamble and the Technical Support Document included in the docket for this rulemaking, indicates that for 13 of the states with approved PSD SIPs, the PSD programs of their SIPs do not appear to apply to GHG-emitting sources. These states are listed in table IV–1, "States with SIPs that Do Not Appear to Apply PSD to GHG Sources (Presumptive SIP Call List)." In a number of these SIPs, the PSD applicability provisions do not mirror EPA's regulatory provisions by applying PSD requirements to sources of any air pollutant "subject to regulation"; instead, the PSD applicability provisions specifically list the air pollutants to which the PSD program applies and do not include GHGs on that list. As a result, the PSD applicability provisions do not, by their terms, cover GHG-emitting sources.

In addition, Connecticut's SIP appears by its terms to preclude the application of PSD to GHG-emitting sources.

Further, some of these states have SIP PSD provisions that by their terms apply PSD to regulated NSR pollutants, or

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

have a substantially similarly phrased requirement, but also have State constitutional or other statutory or SIP provisions that appear to have the effect of limiting PSD applicability to air pollutants identified on a certain date. Therefore, State law, read as whole, would not appear to apply PSD requirements to GHGs until the appropriate State authority takes action to specifically subject PSD to GHGs, and the State has not yet done so.

We conclude that the states with SIPs or State law with these provisions do not appear to apply the PSD program to GHG-emitting sources, and we are including them in table IV–1. We recognize that stakeholders may have other interpretations of these provisions, and we solicit comments from stakeholders on their interpretations. In addition, some of these SIPs may include what we will refer to as a "general authority provision," which is a provision for the State to issue PSD permits that comply with EPA requirements, as described earlier in this preamble. If so, it is possible that these provisions could be interpreted to authorize the State in some cases to issue to GHG sources PSD permits that incorporate EPA's regulatory requirements, as found in 40 CFR 51.166. As a result, we consider table IV–1 to be a presumptive SIP Call list.

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

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

C. States With SIP PSD Applicability Provisions That Do Appear To Apply to GHG-Emitting Sources

On the other hand, as noted above, for most of the states with approved SIPs, those SIPs generally apply PSD to sources of any "regulated NSR pollutant," and we have not received information indicating that the State law includes other provisions that may have the effect of precluding PSD from applying to GHG-emitting sources. As a result, EPA is including a list of states with presumptively adequate SIPs in table IV–2, "States with SIPs That Appear To Apply PSD to GHG Sources (Presumptive Adequacy List)."

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

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

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

State (or area)	EPA region
West Virginia	III
Wisconsin	V
Wyoming	VIII
Utah	VIII

We have developed these two lists of states—one listing states whose PSD program appears to not apply to GHG-emitting sources and one listing states whose program appears to cover such sources—based on our own preliminary research, consultation with states, and review of the 60-day letters, described earlier in this preamble, submitted thus far by states in response to the Tailoring Rule. As explained elsewhere in this preamble, we ask that each State with an approved SIP submit information during the comment period for this rulemaking pertinent to whether its SIP—including the PSD applicability provisions and any other relevant provisions—covers GHG-emitting sources.

D. Proposed Finding of SIP Substantial Inadequacy and SIP Call; Solicitation of Comment

For each of the states listed in table IV–1 of this preamble, we propose to issue a finding that the SIP is "substantially inadequate * * * to * * * comply with [the PSD] requirement[s]" and to "require the State to revise the plan as necessary to correct such inadequacies," *i.e.,* to issue a SIP Call. CAA section 110(k)(5). For each of these states, the SIP appears to not apply the PSD program to GHG-emitting sources.

In consultation with the affected states, EPA compiled relevant provisions of the affected States' SIPs and other State law into a Technical Support Document for this rulemaking. The Technical Support Document, which can be found in the docket for this rulemaking, presents the basis for EPA's proposed finding of substantial inadequacy for the states listed in table IV–1.

As discussed elsewhere in this preamble, we invite comment on this proposal. For any State listed in table IV–1, if we do not receive any further information from the State or other commenters, we expect to finalize our proposed finding and SIP Call. Also for any State listed in table IV–1, if we do receive additional information that our interpretation of these provisions is incorrect or that the SIP includes a general authority provision so that, read as a whole, the SIP applies the PSD program to GHG sources, we will not finalize our proposed finding and SIP Call.

Our basis for the proposed finding—and the proposed SIP Call that is based on this finding—is that CAA section 110(k)(5) provides that EPA may make the finding when the SIP is "substantially inadequate * * * to * * * comply with any requirement of [the CAA]," and this includes the PSD requirements. As discussed earlier in this preamble, SIPs are required to include PSD programs that apply to sources that emit pollutants subject to regulation; as a result, the SIPs at issue merit a finding of substantial inadequacy because they fail to apply the PSD program to GHG-emitting sources on and after January 2, 2011.

For all other states with approved PSD SIPs—which are the ones listed in table IV–2—we solicit comment on whether their SIPs, read as a whole, apply the PSD program to GHG-emitting sources. If, on the basis of additional information, we conclude that their PSD programs do not apply to GHG-emitting sources, we will issue a final finding of substantial inadequacy and SIP Call on the same schedule as that for any of the states for which we are issuing a proposed finding and SIP Call.

We recognize that PSD requirements will not apply to GHG-emitting sources until January 2, 2011, but that for any State for which we finalize a finding of substantial inadequacy and a SIP Call, our plan is to do so approximately one month in advance of that date. EPA believes this timing is justified. SIPs must include, at least a month prior to January 2, 2011, a provision applying PSD requirements to GHG-emitting sources as of January 2, 2011, in order to give sources notice that the requirement applies and that the State will act as the permitting authority. We recognize that as a practical matter, some states may wish that we impose a FIP effective as of January 2, 2011, in order to avoid any period of time when the GHG-emitting sources identified in the Tailoring Rule as subject to PSD are unable to obtain a permit due to lack of a permitting authority. We cannot impose a FIP until we have first finalized the SIP Call and given the State a reasonable period of time to make the corrective SIP submission. EPA strongly believes that this necessarily entails, for those states, finalizing the SIP Call prior to January 2, 2011.

After the close of the comment period for this proposed action, we will review all comments. If we determine that the PSD SIP for any State either by its terms does not apply to sources of GHGs or has conflicting provisions that create ambiguity as to whether it applies to sources of GHGs (such as an applicability provision that explicitly excludes GHG sources, coupled with a general-authority provision that could be read to authorize permitting of GHG sources), then, for that State, we will finalize the finding that the SIP is "substantially inadequate * * * to * * * comply with [the PSD] requirement[s]." At the same time, we will finalize a SIP Call for that State. We will make the finding of substantial inadequacy, notify the State that we have made the finding, and issue the SIP Call in a final action that we intend to sign on or about December 1, 2010, and submit for publication in the **Federal Register** as soon as possible thereafter. We will notify the State of the finding of substantial inadequacy by letter and by posting the signed action on our Web Site. In view of the urgency of the task, which is to ensure that a PSD permitting authority for affected GHG sources is in place by January 2, 2011, we propose to give the final SIP Call an effective date of its publication date. We recognize that this process is highly expedited, but we believe that this is essential to maximize our and the States' opportunity to put in place a permitting authority to process PSD permit applications beginning on January 2, 2011, without which sources may be unable to proceed with plans to construct or modify. Commenters should feel free to advise us if they believe a different approach can achieve this goal.

E. Comment Period

In order to deepen our understanding of what provisions are in the relevant PSD SIPs, and how they are to be interpreted, as well as to ensure that we have a comprehensive picture of all the SIPs in this regard, we ask each State to give us the following information by the close of the comment period on this rule:

1. States With SIP PSD Applicability Provisions That Do Not Appear To Include GHGs

We ask that each of the states listed in table IV–1 of this preamble—for which we have information that their SIP PSD applicability provisions do not include GHGs, and for which we propose a finding of substantial inadequacy and a SIP Call—provide the following information by the end of the comment period for this action:

(a) Confirm, with citations and a copy of the relevant language, that the SIP PSD applicability provisions do not explicitly include GHG sources;

(b) Identify and provide a copy of any provision that specifically precludes PSD applicability for GHG sources;

(c) Identify and provide a copy of any provision of State constitution or other law, including the SIP, that may be read to limit the applicability of the PSD program to pollutants identified at a certain point in time, and therefore not to GHGs.

(d) Indicate, with citations and a copy of the relevant language, if any, whether the SIP includes general authority for the State to issue PSD permits that meet EPA requirements;

(e) Indicate, with citations and a copy of the relevant language, any other provisions of the SIP or State law that may bear on the applicability of the PSD program to GHG-emitting sources.

(f) Indicate the State's interpretation as to whether the SIP, read as a whole, does or does not apply the PSD program to GHG sources or authorize the State to issue PSD permits for GHG sources that meet EPA requirements. This statement should be made by the commissioner or general counsel of the State environmental agency, or by the counterpart at the local or tribal level, or by the State Attorney General.

(g) If the SIP, read as a whole, does not apply the PSD program to GHG sources or authorize the issuance of permits to GHG sources, indicate whether the State plans to develop adequate authority to apply the PSD program to GHG sources and to submit it to EPA as a SIP revision by December 1, 2010, which is shortly before the date on which, as discussed below, EPA intends to finalize its finding of inadequacy and finalize the SIP Call.

As discussed later in this preamble, we also ask these states to inform us, by the end of the comment period, of the period of time (as bounded in this preamble) that they would accept as the deadline for submittal of their SIP revisions in response to a SIP Call.

2. All Other States With Approved SIPs

We request that each State with an approved PSD SIP (see table IV–2) that is not also one of the 13 States for which we propose a SIP Call review its PSD provisions to confirm that it applies the PSD program to GHG sources. We request that each of these states inform us if it has a SIP PSD applicability provision that does not by its terms apply to pollutants "subject to regulation" or similar language, or otherwise apply to GHG sources. In addition, we request that each of these states inform us if it has another State law provision or legal interpretation that may have the effect of limiting PSD applicability to air pollutants covered by EPA's PSD program as of a certain date, and therefore does not include GHGs. For any State whose PSD program, for any of these reasons, may not apply to GHG-emitting sources, we request the same information described in section IV.E.1 of this preamble as soon as possible during the comment period. Once we receive this information, if we believe it shows that the State's SIP PSD program does not apply to GHG sources, we will finalize a finding of substantial inadequacy and a SIP Call on the same schedule as any of the states for which we are proposing a finding and SIP Call.

F. State Actions

1. State Submission of SIP Revision Prior to Final SIP Call

If a State for whose SIP we propose a finding of substantial inadequacy submits a SIP revision by December 1, 2010, that purports to correct that inadequacy, we will not finalize the finding or SIP Call for that State. Rather, we will take action on their SIP submission promptly, as discussed below.

2. State Response to SIP Call

a. Timing of State Submittal

Under CAA section 110(k)(5), in notifying the State of the finding of substantial inadequacy and issuing the SIP Call, we "may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions." We propose to allow the State 12 months from the date of the notice, which will be the date on which we sign the final action, to submit the SIP revision, unless, during the comment period, the State expressly advises that it would not object to a shorter period—as short as 3 weeks from the date of signature of the final rule—in which case we will establish the shorter period as the deadline. As stated earlier in this preamble, EPA intends to finalize the SIP Call on or about December 1, 2010. If the Administrator signs the notice on that date, the earliest possible deadline would be December 22, 2010. The purpose of establishing the shorter period as the deadline—assuming that State advises us that it does not object to that shorter period—is to accommodate states that wish to ensure that a FIP is available as, in effect, a backstop to ensure that there is no gap in PSD permitting. If the State does not advise us that it does not object to a shorter deadline, then the 12-month deadline will apply.

It must be emphasized that for any State that receives a deadline after January 2, 2011, the affected GHG-emitting sources in that State—which are those larger GHG-emitters identified in the Tailoring Rule—will be unable to receive a federally approved permit authorizing construction or modification. Therefore, after January 2, 2011, these sources may not lawfully be able to construct or modify until the date that EPA either approves the SIP submittal or promulgates a FIP.

EPA proposes that this 3-week-to-12-month time period, although expedited, meets the CAA section 110(k)(5) requirement as a "reasonable deadline[]" and we welcome comment on this interpretation. The term "reasonable deadline[]," as it appears in that provision, is not defined. We interpret it to mean a time period that is sensible or logical, based on all the facts and circumstances. Those facts and circumstances include (i) the State SIP development and submission process, (ii) the imperative to minimize the period when sources will be subject to PSD but not have available a PSD permitting authority to act on their permit application, and therefore will be unable to construct or modify; and (iii) the preferences of the State. The following elaborates on those three facts and circumstances.

First, although the 12-month period is consistent with the time period required for SIP revisions in at least one previous SIP call that EPA issued, the NOx SIP

Call,[12] we recognize that a period shorter than 12 months is expedited in light of the time involved in most State SIP development and submission processes. In particular, we recognize that some states may need to undertake full-blown rulemaking actions, which may typically be time-consuming, and we acknowledge that some states may need to change their statutory provisions, which may typically be even more time-consuming. Even so, we understand that at least some states have emergency processes that may be used to significantly expedite action. Although this is a matter of State process, we are prepared, as described elsewhere in this preamble, to work with the states to develop expedited methods for developing, processing, and submitting SIP revisions.

Second, the need to minimize the period when sources may be unable to construct or modify due to the lack of regulatory authority to act on their permit applications is an essential consideration. A shorter period for SIP submittal means that either the State, through the SIP revision that it submits on an expedited basis in light of this tight schedule, or EPA, through a FIP, will become the permitting authority sooner and will then be able to act on permit applications and issue permits that allow new construction and modification of existing plants. The purposes of the PSD provisions include both the protection of the environment and the promotion of economic development, *see, e.g.,* CAA section 160(3)–(4), and the D.C. Circuit has held that the terms of the PSD provisions should be interpreted with these goals in mind. *New York* v. *EPA, 413 F.3d 3, 23(D.C. Cir.), rehearing en banc den.,* 431 F.3d 801 (2005). Accordingly, determining a "reasonable deadline[]" for the submittal of a PSD SIP revision should account for the need to promote economic development by assuring the availability of a permitting authority to process permit applications.

Finally, the preference of the State is important because the deadline for submittal of the corrective SIP revision in response to a SIP Call acts as a burden on the State. If the State does not object to an earlier deadline under which it must operate—which, in a sense, is contrary to the State's self-interest because an earlier deadline typically increases burdens—then that is an indication of the reasonableness of the deadline.

[12] "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Rule." 63 FR 57356 (October 27, 1998).

We suggest the following model language that a State wishing to indicate that it does not object to a deadline shorter than 12 months could consider using in its response to our request for comments. Of course, the State is not obligated to use this specific language, and we present it solely for the convenience of the states:

> U.S. EPA has proposed a finding of substantial inadequacy and SIP Call under Clean Air Act section 110(k)(5) concerning the State's SIP PSD applicability provisions. Further, U.S. EPA has proposed a deadline for the State's submittal of a corrective SIP revision. U.S. EPA has requested the State's comments on the proposed deadline. In light of EPA's perception of the importance of having in place as soon as possible a PSD permitting authority for any GHG-emitting sources that may be subject to PSD requirements, the State does not object to U.S. EPA's establishment of a deadline of [identify the deadline].

b. Substance of State Submittal

(i) Addition of GHGs to List of Pollutants Subject to PSD

We propose to make a finding of substantial inadequacy and issue a SIP Call for each State whose SIP fails to apply the PSD program to GHG-emitting sources. Accordingly, for the State to correct its SIP, the State must submit a SIP revision that applies PSD to GHG sources. For those states whose SIP applies PSD to listed air pollutants, the State may accomplish this correction in at least two different ways. First, the State may revise its SIP so that instead of applying PSD to sources of individually listed pollutants, the SIP applies PSD to sources that emit any "regulated NSR pollutant." We recommend that states follow this approach. It is consistent with our 2002 "NSR Reform" rule. "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR); Final Rule and Proposed Rule," 67 FR 80186, 80240 (December 31, 2001). In addition, it would resolve any issues about whether the State has authority to issue permits for sources of $PM_{2.5}$ emissions, as well as permits for sources of pollutants that EPA may subject to regulation for the first time in the future. Secondly, and as an alternative, the State may retain its approach of applying PSD to sources of individually listed pollutants but submit a SIP revision that includes GHGs on that list of pollutants. If a State chooses this second approach, we will approve the SIP revision as SIP strengthening.

(ii) Definition and Calculation of Amount of GHGs

In adding GHGs to the list of pollutants subject to PSD applicability, the State must define GHGs as a single pollutant that is the aggregate of the group of six gases: CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. As EPA stated in the Tailoring Rule, "[t]he final LDVR for GHGs specifies, in the rule's applicability provisions, the air pollutant subject to control as the aggregate group of the six GHGs * * *. Because it is this pollutant that is regulated under the LDVR, it is this pollutant to which PSD * * * appli[es]." 75 FR 31528.

Although we propose to require that the State define GHGs as described immediately above, we solicit comment on whether the State may adopt a different definition that is at least as stringent, and, if so, what such a definition might be. We caution that a definition that includes more gases than the six identified above could prove to be less stringent in certain ways because it could allow greater opportunities for a source of different gases to net out of PSD.

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

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

other relevant information about the current and projected scope of GHG emissions from bioenergy and other biogenic sources." 75 FR at 41174.

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

(iii) Thresholds

For a State to correct its SIP, the State must submit a SIP revision that applies PSD to GHG sources. Once a State applies the PSD program to GHG-emitting sources, the State must determine the threshold for emissions from those sources that will trigger PSD. In the Tailoring Rule, EPA promulgated a determination that the CAA thresholds of 100 or 250 tpy (depending on the source category) would not apply as of January 2, 2011, or for a period of years thereafter, in light of, in part, administrative concerns. Instead, EPA promulgated a phase-in approach that limits PSD applicability to only the largest GHG emitting sources for a period of time.

A State, in revising its SIP to apply PSD to GHG sources, may adopt the Tailoring Rule phase-in approach into its SIP or it may adopt lower thresholds, but if it adopts lower thresholds, it must show that it has "adequate personnel [and] funding * * * to carry out," that is, administer and implement, the PSD program with those lower thresholds, in accordance with CAA section 110(a)(2)(E)(i).[13]

In the Tailoring Rule, EPA adopted a CO_2e metric and use of short tons (as opposed to metric tons) for calculating GHG emissions in order to implement the higher thresholds. 75 FR 31530, 31532. As noted above, a State retains the authority to adopt lower thresholds than in the Tailoring Rule in order to meet statutory requirements. As a result, the states are not obligated to adopt the CO_2e metric or use of short tons; however, the State must assure that its approach is at least as stringent as the thresholds in the Tailoring Rule.

(iv) State Adoption of "Regulated NSR Pollutants"

Beyond this, we encourage—but do not propose to require—the states for which we propose a SIP Call to submit a SIP revision to adopt the PSD applicability provision found in EPA regulations—which is that PSD applies to "regulated NSR pollutant[s]," including any air pollutant "subject to regulation"—instead of simply adding GHGs to the SIP's list of pollutants subject to PSD.

There are many advantages for a State to revise its SIP PSD applicability provisions in the manner that we encourage. First, doing so would more readily incorporate, for State law purposes, the phase-in approach for PSD applicability to GHG sources that EPA has developed in the Tailoring Rule and expects to develop further through additional rulemaking. As explained in the Tailoring Rule, incorporating this phase-in approach for State law purposes—including Steps 1 and 2 of the phase-in as promulgated in the Tailoring Rule and additional steps of the phase-in that EPA may promulgate in the future—can be most readily accomplished through State interpretation of the "subject to regulation" prong of the definition of "regulated NSR pollutant." If, instead of adopting into its SIP the "regulated NSR pollutant" trigger for PSD applicability, the State simply adds GHGs to its list of pollutants subject to PSD, then the SIP will not include the term "subject to regulation" and therefore may not include any vehicle or "hook" for the State to adopt by interpretation the current and any future steps of the phase-in approach. As a result, the State may have to adopt and submit for EPA approval additional SIP revisions to incorporate the current and future steps of the phase-in approach.

There are other advantages to a State that adopts EPA's definition of "regulated NSR pollutant." The SIP would apply PSD to sources emitting $PM_{2.5}$, thereby resolving as well the problem that some SIPs have of failing to cover $PM_{2.5}$ for PSD purposes. That is, many of the states for which we propose a SIP Call due to their SIPs' failure to apply PSD to sources that emit GHGs also may fail to apply PSD to sources that emit $PM_{2.5}$.[14] To this point in time, this failure has not been a problem because we have allowed the State to issue PSD permits for sources of $PM_{2.5}$ emissions through what is commonly called EPA's "1997 PM_{10} surrogate policy." Under the 1997 PM_{10} surrogate policy, sources and permitting authorities satisfy the CAA requirements for $PM_{2.5}$ in PSD permits by applying the PM_{10} requirements as a surrogate for $PM_{2.5}$. Each permit that relies on our PM_{10} surrogate policy is subject to review as to the adequacy of the presumption that the $PM_{2.5}$ requirements are satisfied. However, we note that EPA has issued a notice of proposed rulemaking to end the prospective use of the 1997 PM_{10} surrogate policy by the end of 2010 (75 FR 6827, February 11, 2010). We are not at this time taking action with respect to these SIPs on account of $PM_{2.5}$, but we encourage states to submit SIP revisions that apply PSD to sources of $PM_{2.5}$.

In addition, the SIP would, in effect, automatically update the State PSD program to apply PSD to any newly regulated pollutants and thereby avoid recurrence of the present problem of a gap in the PSD program coverage for newly regulated pollutants. Finally, State adoption of EPA's definition of "regulated NSR pollutant" would allow the SIP to mirror EPA regulations and the SIPs of most states, which may promote consistency and ease administration.

Notwithstanding the advantages to a State of revising its SIP to apply PSD to "regulated NSR pollutants," we do not, at this time, propose a finding that the SIP is substantially inadequate to comply with a CAA requirement or propose to issue a SIP call that would require a SIP revision that applies PSD to "regulated NSR pollutants." Instead, as noted above, our proposed finding and SIP call are limited to the failure to apply PSD to GHG-emitting sources, and the SIP revision may simply include GHGs on the State's list of pollutants subject to PSD. We do not propose to require the "regulated NSR pollutant" approach because that approach is not necessary to correct the substantial inadequacy—which is the failure of the PSD SIP to cover GHG sources—for which we propose to issue a SIP Call. Rather, that substantial inadequacy may be corrected more narrowly by listing GHGs.

3. General Authority Provision

As noted earlier in this preamble, some SIPs that apply PSD to sources of specified pollutants, not including GHGs, may also include a general authority provision that provides general authority to issue PSD permits that meet EPA requirements. For states that include such general authority, it

[13] We indicated in the Tailoring Rule (75 FR at 31525–26) that a State may undertake a SIP action to either: (1) Revise its PSD program, which already applies to GHG-emitting sources, in order to implement the tailoring approach; or (2) revise its PSD program so that it applies to GHG-emitting sources, in which case the State must also establish its PSD applicability thresholds for PSD. This rulemaking relates to the latter described SIP action.

[14] Following a 1997 review of our national ambient air quality standards ("NAAQS") for particulate matter, we promulgated NAAQS for fine particles ($PM_{2.5}$). We then designated all areas of the country as "attainment," "nonattainment," or unclassifiable for the $PM_{2.5}$ standards, which became effective in April 2005. Pursuant to the CAA, States are obliged to revise their PSD regulations to include the new $PM_{2.5}$ standards.

may be possible to read their SIPs as a whole to authorize the issuance of PSD permits to GHG sources. In that case, EPA would not finalize a finding of substantial inadequacy or a SIP Call for that State.

Even so, EPA encourages states with these SIP provisions to submit a SIP revision that applies PSD to GHG-emitting sources. Such a SIP revision would add clarity to the SIP and, in general, carry the benefits described earlier in this preamble.

G. EPA Actions on SIP Submittals; Findings of Failure To Submit and Promulgation of FIPs

1. Actions on SIP Submittals

As noted above, for any State for which EPA proposes a finding of substantial inadequacy and SIP Call but that submits a SIP revision before December 1, 2010, EPA will not issue a final finding of substantial inadequacy or a SIP Call. Instead, EPA will take action on the SIP submittal as quickly as possible.

By the same token, for any State for which EPA has issued a final finding of substantial inadequacy and a SIP Call, if the State submits the SIP revision within the submittal deadline, then EPA will not issue a finding of failure to submit or promulgate a FIP. Instead, EPA will take action on the SIP submittal as quickly as possible.

We reiterate and encourage states to keep in mind that PSD applicability for certain GHG sources begins January 2, 2011. As such, even states with proposed SIP revisions will not be able to issue federally approved PSD permits for construction or modification to affected sources until those revisions are approved. The affected source would be able to receive a State-issued permit, but the lack of a federally approved permit means that the source would not be in accordance with Federal requirements if it constructed or modified. In light of this potential for burden on the affected sources, we intend to act on any SIP submittals that we receive as promptly as possible.

For example, upon request of the State, we will parallel-process the SIP submittal. Under this approach, the State sends us the draft of the SIP revision on which it plans to seek public comment at the State level, in accordance with CAA section 110(a)(2), and we will publish a proposed approval of that draft SIP revision. In addition, at the same time the State solicits such public comment of its SIP revision at the State level, we will initiate a separate public proceeding on our proposed approval of the SIP revision at the Federal level. If, subsequently, the SIP revision that the State adopts and submits to EPA is substantially similar to the draft on which EPA solicited comment, then EPA will proceed to take final action on the SIP submittal and will not re-notice it for public comment. EPA has successfully employed the parallel-processing approach in past rulemakings, and we believe that to employ it in this process could significantly shorten the time EPA needs to act on the SIP revision.

2. Findings of Failure To Submit and Promulgation of FIPs

If the State does not meet its SIP submittal deadline, we will immediately issue a finding of failure to submit a required SIP submission under CAA section 110(c)(1)(A) and immediately thereafter issue a FIP. This timing for FIP promulgation is authorized under CAA section 110(c)(1), which authorizes us to promulgate a FIP "at any time within 2 years after" finding a failure to submit a required SIP submission. We discuss our approach to the FIP in the companion notice to this rulemaking concerning FIPs for failure to submit the required PSD SIP revision.

3. Rescission of the FIP

After we have promulgated a FIP, it must remain in place until the State submits a SIP revision and we approve that SIP revision. CAA section 110(c)(1). Under the present circumstances, we will act on a SIP revision to apply the PSD program to GHG sources as quickly as possible and, upon request of the State, will parallel-process the SIP submittal in the manner described earlier in this preamble. If we approve such a SIP revision, we will, at the same time, rescind the FIP. We discuss this approach in the companion notice to this rulemaking concerning FIPs for failure to submit the required PSD SIP revision.

H. Streamlining the State Process for SIP Development and Submittal

As stated earlier in this preamble, we recognize that the deadline we are giving states to submit their SIP revisions is expeditious. EPA understands that each State must determine whether its own regulatory development process allows for streamlining, and we defer to the states on the extent to which they may choose to streamline the process. Given the exigencies, we believe a streamlining approach could be beneficial to a State in meeting its deadline. We are prepared to work with the states to develop methods to streamline the State administrative process, although we recognize that the states remain fully in charge of their own State processes. We solicit recommendations during the comment period for ways to streamline the State process for adopting and submitting these SIPs, and to streamline or simplify what is required for the SIP submittal.

For example, we may streamline the process as it concerns public hearing requirements. Many states require that the underlying State regulation that the State intends to develop into the SIP submittal undergo a public hearing. In addition, the CAA requires that the State provide a public hearing on the proposed SIP submittal, under CAA section 110(a)(2). EPA solicits public comment on whether it may, consistent with the CAA, accept the public hearing that the State holds on the underlying regulation as meeting the requirement for the hearing on the SIP submittal, as long as the State provides adequate public notice of the hearing, and EPA will not require a separate SIP hearing.

I. Primacy of the SIP Process

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

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

EPA is taking up the additional task of proposing this SIP Call and the companion FIP action only because the Agency believes it is compelled to do so by the need to assure businesses, to the maximum extent possible and as

promptly as possible, that a permitting authority is available to process PSD permit applications for GHG-emitting sources once they become subject to PSD requirements on January 2, 2011.

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

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

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

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

J. Sanctions

Under CAA section 179(a)(3)(A), if EPA finds that a State failed to submit a PSD SIP revision as required under a SIP Call, then a mandatory sanctions clock begins to run, so that if the State does not submit the required SIP revision within 18 months, EPA must impose one of two sanctions identified under CAA section 179; if the State does not submit the required SIP revision within another 6 months, EPA must impose the second of the sanctions. However, because each sanction applies only to nonattainment areas, it has been a longstanding EPA position that a finding that a State has failed to submit a required SIP revision for a PSD area will not trigger mandatory sanctions.

The two sanctions are described in CAA section 179(b) and include: (i) "Highway sanctions," which are "a prohibition, applicable to a nonattainment area, on the approval" of certain highway construction projects or certain Federal grants for highway construction, CAA section 179(b)(1); and (ii) "[i]n applying the emission offset requirements of [CAA section 173] to new or modified sources or emissions units for which a permit is required under this part, the ratio of emissions reductions to increased emissions shall be at least 2 to 1." CAA section 179(b)(2).

Each of these sanctions applies, by its terms, to nonattainment areas. That is, as just quoted, CAA section 179(b)(1) limits the application of the highway sanctions "to a nonattainment area," and the offsets sanctions under CAA section 173(c) apply only to nonattainment areas. *See, e.g.,* CAA section 173(c)(1) (referring to "any offset requirement under this part [D]," which is entitled, "Plan Requirements for Nonattainment Areas"); section 182(b)(5) (offset requirement for ozone moderate areas); section 182(c)(10) (offset requirement for ozone serious areas); section 182(d)(2) (offset requirement for ozone severe areas); section 182(e)(1) (offset requirement for ozone extreme areas). Neither of the mandatory sanctions provided under CAA section 179(b) applies to attainment/unclassifiable areas.

As a result, a finding that a State has failed to submit a required SIP revision will not trigger mandatory sanctions.

K. Title V

We note that a number of states may have a similar problem with their approved title V operating permit programs, (*i.e.,* that their title V programs do not apply to GHG-emitting sources). We intend to address this issue through separate rulemaking.

V. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action imposes new information collection burden. Although this action asks states to provide information during the comment period, the information requested, which concerns whether the states have authority to regulate GHGs under their SIP PSD provisions, is substantially similar to the information already requested of the states in the Tailoring Rule. The OMB has previously approved the information collection requirements contained in the existing regulations for PSD (*see, e.g.,* 40 CFR 52.21) and title V (*see* 40 CFR parts 70 and 71) under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0003 and OMB control number 2060–0336 respectively. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial

number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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

This proposed rule will affect states and will not, in and of itself, directly affect sources. In addition, although this rule could lead to Federal permitting requirements for certain sources, those sources are large emitters of GHGs and tend to be large sources. After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This 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 one year. The action may impose a duty on certain State, local or tribal governments to meet their existing obligation for PSD SIP submittal, but with lesser expenditures. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132—Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). In this action, EPA is not addressing any tribal implementation plans. This action is limited to states that do not meet their existing obligation for PSD SIP submittal. Thus, Executive Order 13175 does not apply to this action.

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

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

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

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal.

VI. Statutory Authority

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

List of Subjects in 40 CFR Part 52

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

Dated: August 12, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–21701 Filed 9–1–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0521; FRL–9196–2]

Revisions to the Arizona State Implementation Plan, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Maricopa County portion of the Arizona State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions from fugitive dust sources such as construction sites and related activities, unpaved roads, unpaved parking lots, and disturbed soils on vacant lots. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 4, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0521, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 947–4115, *steckel.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency, the Maricopa County Air Quality Department (MCAQD) and submitted by the Arizona Department of Air Quality (ADEQ).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
MCAQD	310	Fugitive Dust From Dust-Generating Operations	01/27/10	04/12/10
MCAQD	310.01	Fugitive Dust From Non-Traditional Sources of Fugitive Dust.	01/27/10	04/12/10
MCAQD		Appendix C—Fugitive Dust Test Methods	03/27/08	07/10/08

On June 8, 2010, EPA determined that the Rule 310 and 310.01 submittals from Maricopa County met the completeness criteria in 40 CFR part 51 appendix V; these criteria must be met before formal EPA review begins.

B. Are there other versions of these rules?

There are prior versions of Rule 310, Rule 310.01 and Appendix C in the SIP. On August 21, 2007, EPA approved and incorporated within the SIP the April 7, 2004 adopted versions of Rule 310, Rule 310.01, and Appendix C (see 72 FR 46564). Maricopa County submitted, through the ADEQ, the March 26, 2008 adopted versions of Rule 310, Rule 310.01, and Appendix C to EPA on July 10, 2008. We have not acted on these versions of the rules. The January 27, 2010 version of Rules 310 and 310.01, the subject of this proposal, however, incorporates the 2008 revisions as well as these latest 2010 amendments. Consequently, for this proposal, we reviewed all amendments and the rules as a whole. In the case of Appendix C, we reviewed the submitted March 27, 2008 version since there was no subsequent submittal.

C. What is the purpose of the submitted rule revisions?

PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control PM emissions. Rule 310 is designed to limit the emissions of fugitive dust or particulate matter from activity related to land-clearing, earthmoving, construction, demolition, bulk material hauling, temporary staging areas and