miles north of the Kingston Rhinecliff Bridge.

(b) *Effective Date.* This rule is effective from 7:30 a.m. until 8:30 a.m. on July 15, 2012.

(c) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative.* A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official Patrol Vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for event coordinators and support vessels, will be allowed to transit the safety zone without the permission of the COTP. Vessels not associated with the event that are permitted to enter the regulated areas shall maintain a separation of at least 100 yards from the participants.

(3) All persons and vessels permitted by the COTP to enter the safety zone shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the regulated area, citation for failure to comply, or both.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated representative via VHF channel 16 or 718–354–4353 (Sector New York command center) to obtain permission to do so.

(5) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, unless authorized by COTP or the designated representative.

(6) The COTP or the designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

Dated: June 27, 2012.

G.A. Loebl,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 2012–17003 Filed 7–11–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2009–0517; FRL–9690–1]

RIN 2060–AR10

Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3 and GHG Plantwide Applicability Limits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating the third step (Step 3) of our phase-in approach to permitting sources of greenhouse gas (GHG) emissions that we committed to do in the GHG Tailoring Rule. This rule completes Step 3 by determining not to lower the current Prevention of Significant Deterioration (PSD) and title V applicability thresholds for GHG-emitting sources established in the Tailoring Rule for Steps 1 and 2. We are also promulgating regulatory revisions for better implementation of the federal program for establishing plantwide applicability limitations (PALs) for GHG emissions, which will improve the administration of the GHG PSD permitting programs.

DATES: This action is effective on August 13, 2012.

ADDRESSES: The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2009–0517. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue Northwest, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Michael S. Brooks, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–3539; fax number (919) 541–5509; email address: *brooks.michaels@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

The purpose of this Step 3 rule is to continue the process of phasing in GHG permitting requirements under the PSD and title V programs begun in Steps 1 and 2 of the Tailoring Rule.[1] As a result of actions to regulate GHGs under other Clean Air Act (CAA) programs, GHGs are required to be addressed under the major source permitting requirements of the Act's PSD and title V programs. The Tailoring Rule was necessary because the CAA applicability requirements that determine which sources are subject to permitting under these programs are based on annual potential emission rates of 100 or 250 tons per year (tpy). Implementing these requirements for GHG-emitting sources immediately after they became subject to PSD and title V requirements would have brought so many sources into those programs so as to overwhelm the capabilities of state and local (hereafter, referred to collectively as state) permitting authorities to issue permits, and as a result, would have impeded the ability of sources to construct, modify or operate their facilities.

To prevent this outcome, the EPA promulgated the Tailoring Rule to tailor the PSD and title V applicability criteria that determine which GHG sources and modification projects become subject to the permitting programs. In the Tailoring Rule, we explained that the administrative burdens of immediate implementation of the PSD and title V requirements without tailoring ''are so severe that they bring the judicial doctrines of 'absurd results,' 'administrative necessity,' and 'one-step-at-a-time' into the *Chevron* two-

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

step analytical framework for statutes administered by agencies.'' 75 FR 31517 June 3, 2010. We further explained that on the basis of this legal interpretation, we would phase in the applicability of PSD and title V to GHG-emitting sources so that those requirements would apply to at least the largest sources initially, and to as many more sources as promptly as possible, at least to a certain point. *Id.* In the Tailoring Rule, we went on to promulgate the first two steps of the phase-in program, which we call Step 1, which took effect on January 2, 2011; and Step 2, which took effect on July 1, 2012, and incorporated Step 1. In these steps, we established the PSD and title V applicability thresholds at what we call the 100,000/75,000 levels, which refers to the number of tpy in carbon dioxide equivalent (CO_2e) potential emissions.

In addition, in the Tailoring Rule, we made regulatory commitments for subsequent action, including this Step 3. Specifically, we committed in Step 3 to propose or solicit comment on lowering the 100,000/75,000 threshold on the basis of three criteria that concerned whether the permitting authorities had the necessary time to develop greater administrative capacity due to an increase in resources or permitting experience, as well as whether the EPA and the permitting authorities had developed ways to streamline permit issuance. We committed to complete the Step 3 action by July 1, 2012.

In this rulemaking, we have evaluated whether it is now possible to lower the 100,000/75,000 threshold to bring additional sources into the PSD and title V permitting programs in light of the three criteria. In addition, we have continued our identification and evaluation of potential approaches to streamline permitting so as to enable permitting authorities to permit more GHG-emitting sources without undue burden.

2. Summary of Major Provisions

The EPA is finalizing Step 3 by determining not to lower the current GHG applicability thresholds from the Step 1 and Step 2 levels at this time. We have found that the three criteria have not been met because state permitting authorities have not had sufficient time and opportunity to develop the necessary infrastructure and increase their GHG permitting expertise and capacity, and that we and the state permitting authorities have not had the opportunity to develop streamlining measures to improve permit implementation.

We are also promulgating revisions to our regulations under 40 CFR part 52 for better implementation of the federal program for establishing PALs for GHG emissions. A PAL establishes a site-specific plantwide emission level for a pollutant that allows the source to make changes at the facility without triggering the requirements of the PSD program, provided that emissions do not exceed the PAL level. Under the EPA's interpretation of the federal PAL provisions, such PALs are already available under PSD for non-GHG pollutants and for GHGs on a mass basis, and we are revising the PAL regulations to allow for GHG PALs to be established on a CO_2e basis as well. We are also revising the regulations to allow a GHG-only source [2] to submit an application for a CO_2e-based GHG PAL while also maintaining its minor source status. We believe that these actions could streamline PSD permitting programs by allowing sources and permitting authorities to address GHGs one time for a source and avoid repeated subsequent permitting actions for a 10-year period.

B. Does this action apply to me?

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

Industry group	NAICS [a]
Agriculture, fishing, and hunting	11
Mining	21
Utilities (electric, natural gas, other systems)	2211, 2212, 2213
Manufacturing (food, beverages, tobacco, textiles, leather)	311, 312, 313, 314, 315, 316
Wood product, paper manufacturing	321, 322
Petroleum and coal products manufacturing	32411, 32412, 32419
Chemical manufacturing	3251, 3252, 3253, 3254, 3255, 3256, 3259
Rubber product manufacturing	3261, 3262
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551
Nonmetallic mineral product manufacturing	3271, 3272, 3273, 3274, 3279
Primary and fabricated metal manufacturing	3311, 3312, 3313, 3314, 3315, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329
Machinery manufacturing	3331, 3332, 3333, 3334, 3335, 3336, 3339
Computer and electronic products manufacturing	3341, 3342, 3343, 3344, 3345, 4446
Electrical equipment, appliance, and component manufacturing	3351, 3352, 3353, 3359
Transportation equipment manufacturing	3361, 3362, 3363, 3364, 3365, 3366, 3366, 3369
Furniture and related product manufacturing	3371, 3372, 3379
Miscellaneous manufacturing	3391, 3399
Waste management and remediation	5622, 5629
Hospitals/Nursing and residential care facilities	6221, 6231, 6232, 6233, 6239
Personal and laundry services	8122, 8123
Residential/private households	8141
Non-Residential (Commercial)	Not available. Codes only exist for private households, construction and leasing/sales industries.

[a] North American Industry Classification System.

[2] Consistent with the definition that the EPA is promulgating in 40 CFR 52.21(aa)(2)(xii) and the relevant GHG thresholds in effect at this time, a GHG-only source is an existing stationary source that emits 100,000 tpy CO_2e or more, but does not emit or have the potential to emit any other regulated NSR pollutant at or above the applicable major source threshold.

C. How is this preamble organized?

The information in this **SUPPLEMENTARY INFORMATION** section of this preamble is organized as follows:

Outline

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

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

APA Administrative Procedure Act
BACT Best Available Control Technology
CAA or Act Clean Air Act
CAAAC Clean Air Act Advisory Committee
CFR Code of Federal Regulations
CO_2e Carbon Dioxide Equivalent
EPA U.S. Environmental Protection Agency
FIP Federal Implementation Plan
FR Federal Register
GHG Greenhouse Gas
NAAQS National Ambient Air Quality Standard
NACAA National Association of Clean Air Agencies
NSR New Source Review
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PAL[s] Plantwide Applicability Limitation[s]
PSD Prevention of Significant Deterioration
SCAQMD South Coast Air Quality Management District
SIP State Implementation Plan
tpy Tons Per Year
UMRA Unfunded Mandates Reform Act

II. Overview of the Final Rule

In the Tailoring Rule, we included an enforceable commitment to complete a rulemaking to propose or solicit comment on Step 3 of the phase-in approach to GHG permitting, and complete that action by July 1, 2012. We stated in the Tailoring Rule that in Step 3, we would lower the applicability thresholds, and consequently increase the number of GHG sources required to obtain such permits, only if we determined that the states have had enough time to develop the necessary infrastructure and increase their GHG permitting expertise and capacity to efficiently manage the expected increase in administrative burden from such permitting, and only if we and the permitting authorities had the opportunity to expedite, or otherwise decrease the burdens of, GHG permitting through streamlining measures.

We proposed Step 3 by notice dated March 8, 2012.[3] In that notice, we proposed determining not to lower the current applicability thresholds for PSD and title V. We also proposed two streamlining approaches to improve permit implementation: (1) The use of GHG PALs on either a mass or CO_2e basis, which includes the option to use the CO_2e-based increases provided in the subject to regulation applicability thresholds in setting the PAL, and to allow PALs to be used as an alternative approach for determining whether a project is a major modification and whether GHG emissions are subject to regulation; and (2) regulatory authority for the EPA or a delegated state or local agency to issue synthetic minor limitations for GHG in areas subject to a Federal Implementation Plan (FIP) that imposes PSD permitting programs for GHGs.

In the short period of time since the EPA promulgated the Tailoring Rule, the EPA and the states have not made sufficient progress developing sufficient capacity or streamlining mechanisms to handle a larger number of permits than Steps 1 and 2 require. As a result, we are finalizing Step 3 by determining not to lower the current, 100,000/75,000 applicability thresholds. In addition, we are finalizing a portion of the GHG PALs streamlining measure we proposed for Step 3. At this time we are not finalizing our proposed streamlining measure of providing regulatory authority for the EPA or a delegated agency to issue synthetic minor limitations for GHG in areas subject to a PSD FIP for GHGs or other streamlining measures.

In section III of this preamble, we discuss background information, including how the Tailoring Rule addresses GHG emissions under PSD and title V, what commitments the EPA made for Step 3 and subsequent actions and what we said in the Step 3 proposal.

[3] ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3, GHG Plantwide Applicability Limitations and GHG Synthetic Minor Limitations; Proposed Rule,'' 77 FR 14226, March 8, 2012 (the Step 3 proposal).

In section IV, we describe this final action. In section V, we discuss our legal and policy rationale for determining not to lower the current 100,000/75,000 applicability requirements for GHG PSD and title V permitting. In section VI, we discuss our rationale for revising regulations for the better implementation of GHG PALs, which will improve the administration of GHG PSD permitting programs. In section VII, we briefly summarize some key comments received on the portions of the proposal that we are finalizing and we summarize our responses; in section VIII, we address the statutory and Executive Order reviews that are required for all rulemakings; and in section IX, we provide the statutory authority for the rulemaking.

III. Background

This section describes key aspects of the background for this rulemaking. For other background information, such as a description of GHGs and their sources, the regulatory backdrop to the Tailoring Rule and the EPA's GHG PSD and title V programs, *see* the Tailoring Rule, the related actions that the EPA took shortly before finalizing the Tailoring Rule [4] and the GHG PSD and title V implementation rules that the EPA promulgated shortly after the Tailoring Rule.[5] For purposes of this rule, we assume that the reader is familiar with these materials. In the following paragraphs we provide a brief summary of key statutory and regulatory background for the PSD and title V permitting programs for purposes of this rulemaking.

A. Statutory and Regulatory Background for PSD and Title V

Under the CAA, PSD applies to any ''major emitting facility'' that commences construction or undertakes a ''modification.'' CAA section 165(a), 169(2)(C). The Act defines the term ''major emitting facility'' as a stationary source that emits or has the potential to emit any air pollutant in the amount of at least 100 or 250 tpy, depending on the source category, on a mass basis. CAA section 169(1). The Act also defines ''modification'' as any physical or operational change that increases the amount of any air pollutant emitted by the source. CAA section 111(a)(4).

Under the CAA, title V applies to, among other sources, a ''major source,'' which is defined to include any stationary source that is a ''major stationary source'' under section 302 of the Act. CAA section 501(2). Under section 302, a ''major stationary source'' is defined as any stationary facility or source of air pollutants which directly emits, or has the potential to emit, 100 tpy or more of any air pollutant. CAA section 302(j).

The EPA's regulations implement these requirements. Under the regulations, PSD applies to any ''major stationary source'' that begins actual construction on a new facility or undertakes a ''major modification'' in an area designated as attainment or unclassifiable for a national ambient air quality standard (NAAQS). 40 CFR 52.21(a)(2)(i)–(iii). The regulations define a ''major stationary source'' as a stationary source that emits, depending on the source category, at least 100 or 250 tpy, on a mass basis, of a ''regulated [new source review (NSR)] pollutant.'' 40 CFR 52.21(b)(1)(i)(*a*)–(*b*). A ''regulated NSR pollutant'' is defined as any of the following: (1) In general, any pollutant subject to a NAAQS, (2) any pollutant subject to a new source standard of performance under CAA section 111, (3) any of a certain type of stratospheric ozone depleting substances, or (4) ''[a]ny pollutant that otherwise is subject to regulation under the Act'' (with certain exceptions for hazardous air pollutants under CAA section 112). 40 CFR 52.21(b)(50)(i)–(iv). The title V regulations define a ''major source'' in 40 CFR 70.2.

B. How does the Tailoring Rule address GHG emissions under PSD and title V? [6]

In the Tailoring Rule, the EPA explained that the rulemaking was necessary because without it, the CAA PSD preconstruction review permitting program and the title V operating permit program would apply to all stationary sources that emit or have the potential to emit at least 100 or 250 tpy of GHGs beginning on January 2, 2011.

In the Tailoring Rule, we explained that in light of the overwhelming administrative burdens that would result from applying PSD and title V at the 100/250 tpy statutory levels, we would exercise our legal authority to phase in the applicability of PSD and title V to GHG-emitting sources so that those requirements would apply ''at least to the largest sources initially, at least to as many more sources as possible and as promptly as possible over time * * * and at least to a certain point.'' 75 FR 31517 June 3, 2010. In the Tailoring Rule, we went on to promulgate the first two steps of the phase-in program, which we call Steps 1 and 2, and we made commitments for subsequent action.

In selecting those thresholds, we closely reviewed the numbers of potential additional permitting actions for GHG-emitting sources, and the resulting administrative burdens, that could occur at various permitting thresholds. We further estimated that the combined additional PSD and title V permitting burdens due to Steps 1 and 2 could, on an annual basis, mean a 42 percent increase in costs over the current PSD and title V program. 75 FR 31540, Table V–1 June 3, 2010.

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

In the Tailoring Rule we committed to undertake Step 3 by proposing or soliciting comment on lowering the thresholds, so that more sources would be subject to PSD and title V requirements, but we did not commit to finalize lower thresholds. We committed to complete Step 3 by July 1, 2012. We further stated that in light of the administrative burdens, we would not, in Step 3, lower the thresholds below the 50,000/50,000 tpy CO_2e levels. In addition, we committed to complete a study of the administrative burdens by April 30, 2015, and to complete Step 4 by April 30, 2016. 40 CFR 52.22(b); 40 CFR 70.12(b).

[4] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act,'' 74 FR 66496, December 15, 2009 (the Endangerment and Cause-or-Contribute Findings); ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule,'' 75 FR 25324, May 7, 2010 (the Light-Duty Vehicle Rule); ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs,'' 75 FR 17004, April 2, 2010 (the Timing Decision or the Johnson Memo Reconsideration).

[5] ''Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Final Rule,'' 75 FR 77698, December 13, 2010 (the GHG PSD SIP Call); ''Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan; Final Rule,'' 75 FR 82246, December 30, 2010 (the GHG PSD SIP Call FIP); ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule,'' 75 FR 82535, December 30, 2010 (the PSD Narrowing Rule); ''Action to Ensure Authority to Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule; Final Rule,'' 75 FR 82254, December 30, 2010 (the Title V Narrowing Rule).

[6] We include this discussion of the Tailoring Rule for background purposes only. In our Step 3 proposal we did not re-open for comment any of the determinations made in the Tailoring Rule or subsequent related final rules or our rationale for finalizing such rules, and we do not re-open now.

D. In the Tailoring Rule, what plan did the EPA announce for developing streamlining measures, and what has the EPA done since then?

In the Tailoring Rule, we announced a plan to explore streamlining techniques that could make the permitting programs more efficient to administer for GHGs, and that therefore could allow expanding those programs to smaller sources. Streamlining techniques to be evaluated included: (1) Defining potential emissions to be closer to actual emissions for various source categories, (2) establishing emission limits for presumptive Best Available Control Technology (BACT) for various source categories, (3) encouraging use of general permits or permits-by-rule, (4) encouraging use of electronic permitting and (5) encouraging the application of more efficient techniques (which we call Lean techniques) to the permitting process for more efficient permitting of GHG sources. We believe that these techniques have the potential to streamline the PSD and title V permitting programs for GHGs to ''allow the expeditious expansion of PSD and title V applicability to more GHG-emitting sources while protecting those sources and the permitting authorities from undue expenses.'' 75 FR 31526 June 3, 2010.

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

We are making progress in developing streamlining approaches. In addition to discussing and soliciting comment on streamlining measures in the Step 3 proposal, in April 2012, we convened what we call the GHG Permit Streamlining Workgroup (or the Workgroup). The Workgroup is formed under the Clean Air Act Advisory Committee (CAAAC): Permits, New Source Review and Toxics Subcommittee. The Workgroup is comprised of industrial, environmental, tribal and state and local representatives. It is tasked with exploring potential streamlining approaches that may make the administration of the CAA permitting programs more efficient for permitting authorities, and that may potentially reduce the permitting burden for smaller GHG-emitting sources if the programs are expanded to apply to these sources. The Workgroup meets regularly and is expected to complete a report by October 2012.

E. What did the EPA propose in the Step 3 proposal?

In the **Federal Register** dated March 8, 2012, the EPA proposed Step 3, proposing to determine not to lower the GHG PSD and title V threshold levels from the 100,000/75,000 tpy CO_2e Step 2 levels. 77 FR 14226 March 8, 2012. The EPA explained that the criteria it identified in the Tailoring Rule for evaluating whether to lower the thresholds in Step 3 did not, at the present time, point towards lowering them. The EPA further explained that the states generally had not had the time to increase their resources sufficiently or develop GHG-specific permitting expertise, and that we and the states had not had the opportunity to develop streamlining measures. 77 FR 14228 March 8, 2012.

In addition, we proposed to revise the PSD regulations to provide for GHG PALs. We stated that ''[w]e believe that this action will streamline PSD permitting programs by allowing sources and permitting authorities to address GHGs one time for a source and avoid repeated subsequent permitting actions.'' 77 FR 14228 March 8, 2012.

In addition, we proposed regulatory provisions to allow for ''synthetic minor'' permits for GHGs under the federal PSD program. We stated that ''[w]e believe that permitting synthetic minor GHG sources under these provisions will reduce the number of sources subject to PSD and title V, reducing the burden on state permitting authorities and the sources.'' 77 FR 14228 March 8, 2012.

IV. Summary of Final Actions

A. Applicability Thresholds for GHGs

In this rule, consistent with the proposal, we are finalizing Step 3 by determining not to lower the current 100,000/75,000 tpy CO_2e PSD and title V applicability threshold levels. This action is based on our analysis of the three criteria—(1) the time that permitting authorities need to ramp up their resources, including developing permitting infrastructure as well as hiring and training staff, (2) sources' abilities to meet the requirements of the PSD program and permitting authorities' abilities to issue timely permits, including gaining experience with GHG permitting and (3) whether the EPA and the states could develop streamlining measures. 75 FR 31559 June 3, 2010. Information currently available to the EPA indicates that these criteria have not been met.

B. Plantwide Applicability Limitations for GHGs

We are finalizing the proposed streamlining measure that would revise the existing PAL permitting program to allow permitting authorities to issue GHG PALs on either a mass basis (tpy) or a CO_2e basis, including the option to use the CO_2e-based increases provided in the subject to regulation thresholds in setting the PAL, and to allow such PALs to be used as an alternative approach for determining whether a project is a major modification and whether GHG emissions are subject to regulation. Within the GHG PAL proposal, we discussed the potential options of a Minor Source Approach and a Major Source Opt-in Approach for allowing sources that are not currently major sources to receive a PAL. After reviewing the comments received, we are finalizing the Minor Source Approach, which will allow permitting authorities to issue GHG PALs to GHG-only sources without requiring the source to undertake an action that would make GHGs ''subject to regulation'' and bring the source into major stationary source status under the Tailoring Rule. Thus, GHG-only sources may obtain a GHG PAL and remain a ''minor source'' so long as their GHG emissions remain below the PAL.[7] However, we are not finalizing the Major Source Opt-in Approach, since many public comments that supported the GHG PALs changes questioned the usefulness of this approach for providing real streamlining benefits.

C. Synthetic Minor Source Permitting Authority for GHGs and Other Streamlining Measures

In our Step 3 proposal, we also proposed creating the regulatory authority for the EPA to issue synthetic minor limitations for GHGs in areas subject to a GHG PSD FIP, and discussed our progress in evaluating the suitability of other streamlining measures and solicited further comment on those other streamlining measures. We are not finalizing the proposed synthetic minor streamlining measure for GHGs in areas subject to a GHG PSD FIP after considering public comments that suggest the program may not be

[7] While we are not taking final action on the GHG synthetic minor permitting program described in the Step 3 proposal, that decision does not affect our authority to issue GHG PAL permits under the Minor Source Approach that we are finalizing in this action.

needed at this time. We also are not taking further action on the other streamlining measures at this time, as we consider the comments received. However, we continue to pursue streamlining options as expeditiously as possible, beginning immediately and proceeding throughout the phase-in period and encourage permitting authorities to do the same. We thank the commenters for their input, which we will consider as we move forward to develop effective streamlining measures to make the GHG permitting programs more efficient to administer. Any such action would provide for additional opportunity for stakeholder input and comment, as appropriate.

V. What is the legal and policy rationale for determining not to lower the current thresholds in the final action?

A. Overview

This final rule fulfills our commitment in the Tailoring Rule to undertake Step 3 of the GHG PSD and title V phase-in process. At this time we conclude that while they have taken important initial steps to manage this new program, state permitting authorities have not had sufficient time and opportunity to develop the necessary infrastructure and increase their GHG permitting expertise and capacity, and that we and the state permitting authorities have not had the opportunity to develop streamlining measures. As a result, the criteria for lowering the applicability thresholds from their current Step 2 levels have not been met. Accordingly, we are determining not to lower the thresholds, so that they will remain at the 100,000/75,000 levels.

In the Tailoring Rule, we committed to undertake future rulemaking, including this Step 3 rulemaking, to examine whether we could lower the thresholds to as low as 50,000/50,000 tpy CO_2e, and thereby apply PSD and title V to more sources. We recognized that lowering the thresholds would add more administrative costs on top of those added by Steps 1 and 2, and as a result, we stated that whether and when we would lower the thresholds would depend on three criteria: (1) The time that permitting authorities need to ramp up their resources, including developing permitting infrastructure as well as hiring and training staff, (2) sources' abilities to meet the requirements of the PSD program and permitting authorities' abilities to issue timely permits, including gaining experience with GHG permitting and (3) whether the EPA and the states could develop streamlining measures.

As described in the following subsections, the states and the EPA have made some progress in these areas. For example, the states have issued some GHG PSD permits and we will be finalizing one streamlining measure in this final rulemaking. However, neither the states nor the EPA have had the opportunity to make significant progress in these areas. First, the states generally have made little progress in developing their GHG permitting infrastructure—*e.g.,* hiring additional personnel and establishing policies and conducting outreach programs to sources unfamiliar with the permitting process—largely because their permitting resources have not increased. In fact, some states indicate that their permitting resources have decreased, and some indicate that their resources may decrease further in the near future. Second, the states have had only limited experience in GHG PSD permitting and therefore have not had the opportunity to develop significant expertise. The main reasons for this are the unexpectedly low amount of PSD permitting to date and the short amount of time since GHG permitting began. Similarly, for title V, applications for title V permits are generally not due until a year after title V becomes applicable to a source. Thus, for Step 2 title V sources, permit applications were generally not due until July 1, 2012. As a result, states would only start reviewing such applications by this date, and accordingly they would not have gained much experience permitting such sources under title V by July 1, 2012. Finally, the states and we have not had the opportunity to develop significant streamlining approaches. This is largely because, as we stated in the Tailoring Rule, certain streamlining approaches require a longer process to develop, including significant data collection activities, notice and comment rulemaking to obtain specific authority and, in some cases, the development of necessary implementation tools. Because of these criteria, we are not lowering the thresholds from their current levels.

The following discusses these criteria, and notes the states' and our experience with GHG permitting to date under the current Step 1 and Step 2 applicability thresholds. We also address the environmental benefits potentially associated with any further reduction in the GHG PSD permitting thresholds.

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

One criterion that we described in the Tailoring Rule for whether to lower the thresholds in Step 3 was whether the permitting authorities could increase their resources. Specifically, we described this criterion as ''the time that permitting authorities need to ramp up their resources in an orderly and efficient manner to manage the additional workload.'' 75 FR 31559 June 3, 2010. We explained that we expected Steps 1 and 2 to result in an increase in the numbers of PSD permits for new construction and modifications and in the numbers of title V permits; and we expected that some increase in state permitting resources would be needed to accommodate, at least in part, those new demands.

In fact, all indications are that the states have not had the opportunity to obtain the necessary resources and to develop their infrastructure to accommodate the level of permitting expected in Steps 1 and 2. Instead, in many cases, reductions in state environmental agency budgets have occurred, which is fully consistent with the overall reductions in state budgets that have been recently seen across the nation.

In the proposal, we noted several indications that state permitting resources have decreased in the past several years. For example, an August 2010 report by the Environmental Council of the States concluded that state budgets decreased by an average of approximately $21 million per state from 2009 to 2011.[8] In addition, a June 28, 2011 letter from the National Association of Clean Air Agencies (NACAA) to the U.S. House of Representatives detailing the status of 40 state and local air quality agencies[9] indicated that 80 percent of air agencies experienced a decline in staffing levels in the preceding 4 years. According to the letter, over the years 2008–2010, the average loss of staff per agency was 16.7 percent. In addition to staffing losses, 48 percent of air agencies experienced furloughs, and the majority faced significant declines in budgets. These cutbacks resulted in curtailing core air program activities including permit issuance, as well as education and outreach programs. Further, we also noted in the proposal that we had consulted informally with some states, and many confirmed that they have seen

[8] S. Brown, A. Fishman, ''The Status of State Environmental Agency Budgets, 2009–2011.''

[9] Letter from S. William Becker, NACAA, to Honorable Michael Simpson and Honorable James Moran, U.S. House of Representatives.

their budgets and staffs reduced in recent years as the states have responded to the economic downturn and budget shortfalls.

In light of these developments, we noted in the Step 3 proposal:

* * * States have not been able to develop their GHG permitting infrastructure—*e.g.,* hiring additional personnel, establishing policies and conducting outreach programs to sources unfamiliar with the permitting process—largely because their permitting resources have not increased and, in fact, in some cases have decreased and may decrease further in the near future.

77 FR 14235 March 8, 2012. We received comments from states and localities supporting those statements, and providing confirmation that their resources for GHG permitting were falling, in part because of lower overall resources. For example, the South Coast Air Quality Management District (SCAQMD) stated, ''* * * SCAQMD's overall staffing, as well as permitting resources, continue to drop.'' [10] [11]

These recent reductions in state permitting resources have undermined the states' ability to build their GHG permitting infrastructure through hiring and training of staff and through education and outreach programs to the affected sources.[12] These reductions point away from lowering the Step 1 and 2 thresholds at this time. In the Tailoring Rule, we estimated that lowering the thresholds to 60,000/60,000 tpy CO_2e would increase administrative burdens by 20 percent above the total burdens at the Step 2 levels (and 40 percent above the pre-GHG permitting burdens); and that lowering them to 50,000/50,000 tpy CO_2e would increase administrative burdens by 40 percent above the total burdens at the Step 2 levels (and 99 percent above the pre-GHG permitting burdens). Also, as a result of a large increase in the number of GHG sources required to get permits, permitting agencies will need to conduct education and outreach programs to small business and the public who have not typically been subject to air quality permitting requirements in the past to raise awareness and understanding of the regulatory requirements for these smaller sources. Absent this outreach effort, we believe that many sources will not understand, and perhaps may not even be aware of, the new regulatory obligations.

It is important to recognize that to this point, states have not been confronted with the amount of GHG permit activity that we estimated in the Tailoring Rule for Steps 1 and 2. Environmental advocacy organizations emphasized this point in commenting on the proposal, and one of these organizations concluded that the EPA should lower the thresholds. We respond to these comments in more detail below, but in brief, although we recognize the disparity in actual permitting activity compared to our estimates, this disparity does not serve as a basis for lowering the thresholds in this Step 3 rulemaking. As we discuss below, there is some indication that at least part of this disparity may be temporary, due to the recent economic downturn and slow recovery, as well as other factors. Moreover, in the Tailoring Rule, we based the level of the thresholds on overall administrative burden that we determined based on several sets of data and a complex, multi-component methodology. The number of GHG permits is an important component of overall burden, but there are other components as well, including (1) the per-permit processing costs and (2) other administrative burdens, including training and enforcement expenses, public education and outreach expenses, and the expenses of additional synthetic minor source permitting for GHG sources seeking to avoid PSD and title V applicability. At this time, with just the first year of implementation of the Step 2 thresholds having been completed on June 30, 2012, we do not have enough new information about the data sets and methodology to merit revising the administrative burden estimates or, therefore, the thresholds. In particular, we note some indications that in the Tailoring Rule, we may have underestimated the administrative burdens in certain respects by, for example, not fully accounting for the additional synthetic minor permitting activity, that is, sources taking synthetic minor limitations on their GHG emissions so as to avoid becoming subject to PSD or title V due to those emissions. As a result, contrary to the commenters, we do not consider the unexpectedly smaller number of GHG permits to indicate that states have greater permitting capacity.

For the previously described reasons, states have not had the opportunity to build capacity and resources to handle GHG permitting. Accordingly, this criterion of state resources supports determining not to lower the current thresholds.

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

Another criterion identified in the Tailoring rule is whether permitting authorities have the ability to issue timely permits [13] based on efficiencies resulting from GHG permitting implementation experience.[14] In describing this criterion in the Tailoring Rule, we expected that permitting authorities, by acting on the anticipated volume of GHG PSD permit actions, would have the opportunity to establish efficient methods for resolving issues and processing permits, including developing expertise within their staffs. This would allow them to achieve efficiencies that, in turn, would create capacity for processing more GHG

[10] The SCAQMD comments are located in the docket for this rulemaking, Docket No. EPA–HQ–OAR–2009–0517–19280.

[11] One environmental advocacy organization commented that in its view, its home state of Pennsylvania underfunded the state environmental agency. The commenter emphasized that such underfunding should not be taken as an indication of a lack of GHG permitting capacity. Another environmental advocacy organization made a comparable point more generally. We have applied this criteria on a nationwide basis, and we have found that many states are confronting decreased resources, including states, such as some of the ones in the Regional Greenhouse Gas Initiative, that have taken action to regulate GHGs.

[12] As we noted in the Step 3 proposal, some states have also been obliged to devote resources to developing and submitting for EPA approval SIP revisions and title V program revisions authorizing GHG permitting, instead of using those resources to build GHG permitting infrastructure. 77 FR 14236 March 8, 2012.

[13] This criterion may be measured by the period of time permitting authorities need to issue permits.

[14] In the Tailoring Rule, we described this criterion as ''information we have as to the sources' abilities to meet the requirements of the PSD program and the permitting authorities' ability to process permits in a timely fashion.'' 75 FR 31,559 June 3, 2010. An issue arises as to the meaning of this reference to sources. We stated in the Step 3 proposal: ''We note that in the Tailoring Rule, we made clear that sources' abilities to meet the requirements of the PSD and title V programs depend at least in part on the ability of the states to develop, as part of the state programs, outreach and educational efforts to facilitate source compliance. Accordingly, for present purposes, we think this component concerning sources may be examined by a review of the states' progress in developing state GHG permitting programs.'' 77 FR 14232 March 8, 2012. Industry commenters took issue with this statement, and asserted that this criterion requires an examination of sources' abilities to meet PSD requirements that is independent of the permitting authorities' ability to process permits in a timely fashion. We do not find it necessary in this rulemaking to resolve this issue as to the meaning of the reference to sources. This is because for purposes of this rulemaking, the information we have about permitting authorities leads us to conclude that this criterion points towards determining not to lower the thresholds. Even if the sources were to be treated as a separate component of this criterion, no commenter suggested that information about the sources would lead us to conclude anything differently about this criterion. Because, in this rulemaking, information about sources does not play a role in assessing this criterion, it is not necessary to resolve the issue of the meaning of the sources' abilities to comply with GHG permitting requirements, and whether sources' abilities to comply should be considered independently from the permitting authorities' ability to administer GHG permitting.

permit applications. Thus, with this criterion, we based our commitment to complete the Step 3 rulemaking in part on the assumption that Steps 1 and 2 would provide us with the necessary information to determine whether and when it has become possible for states to administer GHG permitting programs for additional sources. However, as events have transpired, states have not yet had the opportunity to make this progress.

In our Step 3 proposal, we showed that as of December 1, 2011, the EPA and permitting authorities had issued 18 GHG PSD permits. We noted that these 18 permit actions had been spread among 11 states, almost all of which had issued only one GHG permit. We concluded: ''This activity has simply been too limited to allow States to build internal capacity to handle GHG permitting for a diverse set of sources, to develop more efficient techniques for permitting any particular source category, or to develop streamlining approaches to address GHG permitting.'' 77 FR 14237 March 8, 2012.

Since then, the pace of permitting has remained too low for states to build their GHG permitting capacity. As of May 21, 2012, the EPA and permitting authorities have issued a total of 44 GHG PSD permits. Importantly, states have seen little if any title V permitting activity to this point; indeed, applications for title V permits from Step 2 (or ''GHG-only'') sources were generally not due until July 1, 2012 (*i.e.,* 1 year after the effective date of Step 2, when GHG-only sources could have first become subject to title V).

Therefore, the conclusions we drew at proposal remain valid. The GHG permitting activity has simply been too limited to allow states to build internal capacity to handle GHG permitting for a diverse set of sources, to develop more efficient techniques for permitting any particular source category or to develop streamlining approaches to address GHG permitting. In sum, the states' experiences to date do not provide a basis for us to conclude that permitting authorities in fact have the ability to issue timely permits for a larger set of actions based on GHG permitting experience. Therefore, this criterion points towards determining not to lower the current thresholds.

D. What progress has the EPA made in developing streamlining methods?

In the Tailoring Rule, we indicated that the criterion of implementation of permit streamlining measures would assist permitting authorities by removing some sources from the permit program, or allowing more efficient processing of permit applications. Specifically, we described this criterion as ''our progress in developing streamlining methods that will render the permitting authority workload more manageable by taking some sources off the table (through regulations or guidance interpreting 'potential to emit'), and by allowing for more efficient permit processing (through general permits and presumptive BACT).'' 75 FR 31559 June 3, 2010. We further stated, however, that some streamlining methods would take several years for the EPA to develop, and for states to gain authority to implement. Thus, we did not anticipate that streamlining approaches would necessarily be available by the time of the Step 3 rulemaking. We also noted that in consultations with the states, they reported that they had made little progress in implementing streamlining measures, and none had adopted streamlining measures specifically to address GHGs.

The states and we continue to make progress in streamlining. The revision to the PALs regulations that we promulgate in this action is a step in that direction. In addition, as noted, we recently convened the CAAAC GHG Permit Streamlining Workgroup to explore potential streamlining approaches. The Workgroup meets regularly and is expected to issue a report by this October with suggestions for specific approaches. Even so, to this point, neither we nor the states have been able to develop or implement sufficient streamlining actions to meaningfully reduce permitting administrative burdens. Accordingly, this criterion points towards determining not to lower the current thresholds.[15]

E. What would be the effects on emissions of lowering the current thresholds?

The fact that the PSD program would apply to a large percentage of the national inventory of stationary source GHG emissions at the 100,000/75,000 tpy CO_2e levels of the Tailoring Rule, while increasing the number of sources subject to permitting by only a modest amount, supported the reasonableness of our decision to establish the thresholds at those levels. For the current rulemaking, we have conducted further analysis, which shows that reducing the thresholds in Step 3 to as low as 60,000/60,000 tpy CO_2e would bring within the potential sphere of the PSD program less than an additional 1 percent of all GHG emissions from all stationary sources nationally while potentially subjecting over 2,000 additional sources to the permitting program. Our analysis shows that as the thresholds go lower, the number of sources increases dramatically, but the volume of GHG emissions emitted by each additional source gets smaller and smaller. Lowering the thresholds to 50,000/50,000 tpy CO_2e would bring within the sphere of PSD an additional 3 percent of the national inventory of GHG emissions while potentially subjecting over 4,500 additional sources to the permitting programs. Of course, in any year, only a fraction of national GHG stationary source emissions would actually become subject to PSD controls because only a fraction of sources would undertake modifications or new construction that trigger BACT controls. Thus, the additional reductions in GHG emissions from lowering the thresholds in Step 3 would be small under any circumstances even if the thresholds were lowered to 50,000/50,000 tpy CO_2e. This small amount of incremental environmental benefit from lowering the thresholds, coupled with the additional burden associated with permitting these sources (in light of the lack of increase in state resources and experience as well as the lack of streamlining measures), supports the reasonableness of our determination not to lower the thresholds in Step 3.

F. What is the effective date of this action?

The effective date of this action is August 13, 2012. In the Tailoring Rule, we provided that Step 3 would take effect by July 1, 2013.[16] We selected this date because it would provide a 1-year delay following the required, July 1, 2012 date of promulgation of Step 3. The purpose of the delay would be to allow states sufficient time to incorporate any lower thresholds into their state implementation plans (SIPs), and submit a SIP revision for EPA approval. However, because the EPA is determining not to lower the thresholds, SIP revisions are not necessary and, as

[15] Environmental advocacy organization commenters stated that in light of the less-than-expected amount of GHG permitting activity, the three criteria should be considered either to be irrelevant or to have been met. We respond to this comment below and, in more detail, in the Response to Comments document.

[16] The Tailoring Rule regulations provide that Step 3 ''shall become effective July 1, 2013.'' 40 CFR 52.22(b)(1), 70.12(b)(1), 71.13(b)(1), which we read to mean effective by July 1, 2013, consistent with the accompanying discussion in the preamble. 75 FR 31516 June 3, 2010 (describing Step 3 as possibly including more sources ''beginning by July 1, 2013'').

a result no delay in the effective date is necessary.

G. Conclusion

In the Tailoring Rule, we recognized that the Step 1 and 2 thresholds we promulgated would create significant administrative burdens on permitting authorities. We stated that we would lower the thresholds, and thereby create additional administrative burdens, based on consideration of three criteria concerning state resources and experience as well as EPA and state efforts to streamline the permitting process. In this rulemaking, on the basis of these criteria and the public comments received, we determine not to lower the thresholds at this time. Permitting authorities need additional time to secure resources, hire and train staff, and gain experience with GHG permitting, and additional time is required to develop streamlining measures to expedite permit program administration, before we move toward fuller implementation of the program. We note that determining not to lower the current PSD and title V thresholds for Step 3 does not have implications for whether we will lower the thresholds in Step 4 or afterwards. Our actions in Step 4 will depend on our evaluation of the appropriate factors at the time of that rulemaking. If those factors point in the direction of lowering the thresholds, we will act accordingly.

As noted, we recognize the concerns expressed by environmental advocacy organization commenters concerning the disparity between expected number of permits and actual number of permits. We intend to track permitting activity to provide a sufficient base of information to assure that the 5-year study (required to be completed by April 30, 2015) is robust, and to facilitate appropriate action concerning the thresholds in Step 4 (required to be completed by April 30, 2016). We discuss these plans below in our response to these commenters.

VI. What streamlining approach is the EPA finalizing with this action?

In the Tailoring Rule, the EPA committed to explore streamlining measures as an integral part of the phase-in approach to permitting requirements for GHG emissions under PSD and title V. Streamlining techniques would allow permitting authorities to be more efficient in administering their GHG permit programs by reducing the overall resources required to administer these programs now and in the future. By implementing effective streamlining techniques, permitting, authorities could move more rapidly toward regulating a larger set of GHG sources at lower thresholds. In the Tailoring Rule, we identified potential streamlining options. We also acknowledged that it will take us several years to develop, and for states to gain authority to implement, effective streamlining methods. We committed to continue to explore the identified options, and to request comment on these and any additional streamlining approaches in the Step 3 rulemaking.

This final rule provides a mechanism to streamline the GHG PSD permit program by expanding the existing PSD PAL provisions to better implement PALs for GHGs. The expanded PAL provisions (1) allow permitting authorities to establish GHG PALs on either a mass basis (tpy) or a CO_2e basis, (2) include the option to use the CO_2e-based increase provided in the subject to regulation thresholds in setting the CO_2e PAL, (3) include the option to issue a GHG PAL (issued on a mass basis or CO_2e basis) to GHG-only sources that have the potential to become major sources under the Tailoring Rule and (4) allow GHG PALs (issued on a mass basis or CO_2e basis) to be used as an alternative approach for determining both whether a project is a major modification and whether GHG emissions are subject to regulation. Accordingly, permitting authorities implementing the federal PSD program will be able to use the authority provided to them under 40 CFR 52.21, including the changes finalized in this rule, and corresponding permitting procedures (such as those in 40 CFR part 124) to issue PAL permits for GHGs in a manner consistent with PAL permits issued for regulated NSR pollutants other than GHGs.

In the Tailoring Rule, we did not identify PALs as a viable streamlining technique for GHG sources. However, since we finalized the Tailoring Rule, we have recognized that PALs could be designed in a way that could be useful for easing the administration of GHG permitting, and we proposed changes to the existing PAL rules in our Step 3 proposal to address the unique PSD applicability aspects associated with GHGs. In the final rule, we have amended the existing PAL regulations to recognize the unique applicability characteristics of GHGs and to provide GHG sources with greater operational flexibility, while making application of the PAL rules to GHGs more consistent with the outcome achieved when those rules are applied to other regulated NSR pollutants. We believe the approach to PALs in the final rule will provide air quality benefits by encouraging sources to control GHG emissions through efficiency improvements or the use of other emission reduction procedures, processes or equipment before such sources are subject to PSD permitting for GHGs, and may encourage sources potentially subject to PSD to limit their emissions without triggering major modification permitting procedures or related administrative processes necessary to revise title V permits to reflect such major modifications.

Accordingly, this final rule amends the PSD regulations at 40 CFR 52.21 to create authority for permitting authorities applying the federal PSD permitting program to issue PALs on either a mass basis or a CO_2e basis to major sources and GHG-only sources that have the potential to become major sources, including the option to use the CO_2e-based applicability thresholds provided in the ''subject to regulation'' definition in setting the PAL limit for a CO_2e-based PAL, and also to allow such PALs to be used as an alternative approach for determining whether a project is a major modification and subject to regulation for GHGs. We are also making small changes to a number of the existing provisions in order to ensure that those provisions can be implemented in light of the GHG-based changes described above. In so doing, we did not seek comment on or re-open the entire PAL program. Instead, the request for comment was limited to the specific changes we are making with respect to GHGs (non-GHG PAL-related issues are outside the scope of this rulemaking). The following discussion outlines our approach to PALs for GHGs.

A. What is the EPA finalizing?

As noted, we are finalizing revisions to the federal PAL regulations to allow permitting authorities to establish GHG PALs on either a mass basis (tpy) or a CO_2e basis, including the option to use the CO_2e-based applicability thresholds for GHGs provided in the subject to regulation definition in setting the PAL on a CO_2e basis and to issue a GHG PAL to GHG-only sources that have the potential to become major sources under the Tailoring Rule (Minor Source Approach), and to allow GHG PALs to be used as an alternative approach for determining both whether a project is a major modification and whether GHG emissions are subject to regulation.

B. What is a PAL?

Under the EPA's existing regulations, a PAL is an emissions limitation for a single pollutant expressed in tpy that is enforceable as a practical matter and is established source-wide in accordance

with specific criteria. 40 CFR 52.21(aa)(2)(v). Such PALs are voluntary in the sense that sources may, but are not required to, apply for a PAL, and the decision to issue a PAL to particular source is at the discretion of the permitting authority. These PALs offer an alternative method for determining major NSR applicability. If a source can maintain its overall emissions of the PAL pollutant below the PAL level, the source can make a change without triggering PSD review. This allows sources to make the changes necessary to respond rapidly to market conditions, while generally assuring the environment is protected from adverse impacts from the change. A PAL also results in significant environmental benefit by providing the community with an understanding of the long-term emissions impact from a facility, by preventing emissions creep (*i.e.,* a series of unrelated individual emissions increases that are below major NSR applicability thresholds) and by requiring enhanced monitoring, recordkeeping and reporting provisions to demonstrate compliance with the PAL.

C. Why is the EPA amending the regulations?

We are revising the existing PAL regulations because the EPA interprets the existing regulations under 40 CFR 52.21 for the federal PAL and PSD programs to allow permitting authorities to issue GHG PALs only on a mass basis.[17] In addition, our interpretation of the existing regulations did not provide for the use of the CO_2e-based subject to regulation thresholds in setting the PAL limit, only allowed GHG PALs to be issued to existing major stationary sources [40 CFR 52.21(aa)(1)] and did not allow compliance with a PAL to be considered for the purpose of determining whether GHG emissions are ''subject to regulation.''

The PSD provisions generally define a ''major stationary source'' as a stationary source which emits or has the potential to emit 100 or 250 tpy or more of a regulated NSR pollutant, depending on the type of source. 40 CFR 52.21(b)(1)(i)(*a*)–(*b*). A ''GHG-only source'' is an existing stationary source that emits or has the potential to emit 100/250 tpy of GHGs on a mass basis, and emits or has the potential to emit CO_2e in amounts equal to or more than the GHG subject to regulation threshold for new sources (currently 100,000 tpy of CO_2e or more), but does not emit or have the potential to emit any other regulated NSR pollutant at or above the applicable major source threshold. Regardless of the amount of GHGs currently emitted, a GHG-only source that has avoided PSD applicability for GHG under Step 1 or 2 of the Tailoring Rule would be a minor source for purposes of PSD, and could only become major for PSD when it proposes to undertake a change that increases GHG emissions by at least 75,000 tpy CO_2e, the amount of increase needed under the current Tailoring Rule thresholds.[18] 40 CFR 52.21(b)(49)(v)(*b*). Because the existing PAL provisions are only available to existing major stationary sources, permitting authorities issuing a PAL under the federal PAL program can only issue a PAL to a GHG-only source when the source proposes to undertake a change that would make it an existing major stationary source.[19] 40 CFR 52.21(aa)(1). As a result, GHG-only sources may not currently use PALs as an alternative mechanism for determining major NSR applicability in the same way that existing major stationary sources of non-GHG regulated NSR pollutants may. Instead, because the Tailoring Rule applicability determinations depend on the GHG emissions related to a particular action on the part of the source, GHG-only sources must currently wait to obtain a PAL until they actually propose to make a change that qualifies the source as a major stationary source under the PSD program. Moreover, as we read the current federal regulations in 40 CFR 52.21, any GHG PALs issued under those regulations can only be mass-based. This requirement is due to the fact that PALs were originally designed to be an alternative method for determining PSD applicability for regulated air pollutants, and such pollutants only have mass-based applicability triggers for PSD, which the PAL provisions reference. For example, setting an actuals PAL level under 40 CFR 52.21(aa)(6) of the existing regulations requires reliance on the mass-based baseline actual emissions under 40 CFR 52.21(b)(48) and mass-based significant levels under 40 CFR 52.21(b)(23).

On the other hand, PSD applicability for GHG emissions from existing sources under the Tailoring Rule relies on CO_2e thresholds for determining whether the GHG emissions from any particular action are ''subject to regulation,'' which in turn informs the determination of whether a source is a major modification. Thus, under the current regulations, there is a mismatch between the mass-based PAL and the CO_2e-based portions of the PSD applicability thresholds, such that the existing PAL regulations do not provide an effective alternative applicability determination mechanism for GHG sources.

We believe changing the PAL regulations to provide for CO_2e-based PALs will provide GHG sources with additional operational flexibility, and could reduce GHG workload burdens on permitting authorities by decreasing the number of PSD permit applications that permitting authorities must process for these sources over the long term. Being able to establish a PAL on a CO_2e basis will provide planning certainty to GHG sources, and will relieve the current time pressure to issue a PAL permit concurrent with authorization for a planned major modification which could potentially delay that project. We also believe that, regardless of which metric is specified to measure GHG emissions in a PAL, compliance with a GHG PAL generally assures that the environment remains protected from adverse air impacts resulting from changes a source undertakes in compliance with such a PAL, because emissions cannot exceed this pre-established level without further review. A PAL also provides an incentive for a source to minimize GHG emissions increases from future projects in order to stay under the PAL and avoid triggering major modification permitting requirements.

These regulatory changes that allow sources to establish a PAL on a CO_2e basis also make PALs for GHGs function similarly to PALs for non-GHGs. A significant emissions rate, as specified in 40 CFR 52.21(b)(23), is a threshold used to determine when PSD applies to modifications at existing major stationary sources, and only modifications that result in net emissions increases above the significant rate trigger major PSD permitting requirements. Unless a specific significant emissions rate has been established, the federal regulations specify that the significant rate is effectively zero, *i.e.,* any increase in emissions would trigger PSD. Under the

[17] *See* EPA guidance ''Establishing a Plantwide Applicability Limitation for Sources of GHGs'' April 19, 2011, located at *http://www.epa.gov/nsr/ghgdocs/ghgissuepal.pdf.*

[18] This is a consequence of the wording used to implement the Tailoring Rule Step 1 and 2 thresholds through the definition of ''subject to regulation.''

[19] While the changes we are finalizing in this rulemaking will allow minor sources that are also GHG-only sources to obtain a PAL for their GHG emissions only under the federal PAL program, the revisions in this rulemaking will not allow any other minor sources to obtain a PAL for any pollutants and do not otherwise disturb the settled requirement that a source seeking to obtain a PAL for non-GHG pollutants must be a major stationary source.

current PAL provisions, a permitting authority establishes the PAL level for a pollutant at a particular source by adding the applicable significant rate found in 40 CFR 52.21(b)(23) to the baseline actual emissions of that pollutant at the source.

The EPA did not promulgate a significant emissions rate for GHG emissions in 40 CFR 52.21(b)(23) in the final Tailoring Rule. Thus, if a permitting authority establishes a mass-based GHG PAL under the existing federal regulations, the PAL level included in the permit may not include any margin above the baseline actual emissions to account for emissions growth. Absent this margin, a GHG PAL would usually provide less flexibility to a source when compared to PALs for other regulated NSR pollutants.

This final rule revises the PAL and ''subject to regulation'' provisions in 40 CFR 52.21 to provide GHG sources with the same kind of flexibility sources currently have for other regulated NSR pollutants by allowing sources the option to establish a CO_2e-based PAL using the CO_2e-based emission increase provided in the subject to regulation thresholds in 40 CFR 52.21(b)(49). Thus, under the final rule, a permitting authority issuing a CO_2e-based PAL under the current Tailoring Rule thresholds may add 75,000 tpy CO_2e to a source's CO_2e baseline actual emissions to establish the PAL level, because the Tailoring Rule established 75,000 tpy CO_2e as the appropriate rate of emissions increase for the GHG subject to regulation applicability threshold for existing sources. In the Tailoring Rule, the EPA revised the definition of ''subject to regulation'' to establish a threshold level of GHG emissions that a source must meet, on both a source and project basis, before GHGs are considered a regulated NSR pollutant for PSD permitting purposes. However, the EPA also made clear that its action had the same substantive effect and should be treated as if the EPA had revised other components of the definition of ''major stationary source'' to achieve the same effect. Thus, in addressing PALs for GHGs in this rule, the EPA is continuing to focus on the thresholds incorporated into the ''subject to regulation'' provision, consistent with the approach in the Tailoring Rule.

The PAL revisions in this final rule will also have the effect of streamlining future major NSR applicability determinations for sources that choose a GHG PAL. The revisions eliminate the need to evaluate GHG emissions for major NSR applicability as long as the source is complying with the GHG PAL, because a GHG PAL can function to assure not only that a change is not considered a major modification, but also that GHG emissions from the source undertaking that change are not subject to regulation. Since the PSD regulations, including the Tailoring Rule, require an existing source to determine (1) whether a specific action would increase the GHG emissions by a certain CO_2e amount that would make them subject to regulation for PSD permitting purposes, and if so, (2) whether the GHG emissions increase is also significant on a mass basis to qualify the change as a major modification, the rule changes that allow for setting a GHG PAL at a level that either includes the CO_2e-based increase identified in the Tailoring Rule thresholds or the mass-based significant emissions rate will insure that the source does not exceed that amount and thus will not emit GHGs in amounts that would trigger PSD permitting obligations. In sum, we believe that the existing federal PAL regulations do not generally provide an effective means of achieving burden reductions for permitting authorities and GHG sources when compared to the operational flexibility provided by PALs for regulated NSR pollutants other than GHGs, and therefore are overly restrictive with respect to GHG sources. Accordingly, in this final rule we are revising the PSD rules for PALs to allow permitting authorities to: (1) Issue effective PALs to GHG-only sources; (2) issue either a mass-based (tpy) or a CO_2e-based PAL to a particular source; (3) allow CO_2e-based PALs to include the CO_2e-based emission increases provided in the subject to regulation thresholds; and (4) allow compliance with a GHG PAL to be used as an alternative applicability approach for determining both whether a project is a major modification and is subject to regulation for GHGs. Provided a source complies with a GHG PAL that meets the requirements in 40 CFR 52.21(aa)(1) through (15), GHG emissions at the source will not be ''subject to regulation,'' and a project at the source will not result in a major modification for GHG purposes.

The Minor Source Approach discussed in the proposal for Step 3 allows a GHG-only source to remain a minor source for PSD purposes and still obtain a GHG PAL.[20] In this way permitting authorities can issue a GHG PAL to a GHG-only source that would only cover GHG emissions without requiring the source to trigger PSD permitting requirements as a prerequisite.

We are providing for the Minor Source Approach for GHG PALs in this final rule by revising the PAL regulations to allow a GHG-only source to submit an application for a GHG PAL while maintaining its minor source status. We also define a number of terms when used for the specific purpose of imposing a GHG PAL for a minor source. A GHG-only source that complies with its GHG PAL will not trigger PSD permitting requirements for GHGs, but could still trigger PSD for other regulated NSR pollutants if it undertakes a change that increases emissions by an amount at or above the major source threshold for any non-GHG regulated NSR pollutant. 40 CFR 52.21(b)(1)(i)(*c*).

Moreover, under the Tailoring Rule, GHG-only sources must determine whether any project will result in GHG emissions that are subject to regulation (on a CO_2e basis) and correspondingly will also result in a major modification (on a mass basis). Because GHG-only sources must undertake these determinations for any change, even those that would not lead to emissions at or above the applicable thresholds for GHGs, the regulatory revisions we are finalizing clarify that GHGs will not be ''subject to regulation'' under 40 CFR 52.21(b)(49) at such sources, as long as the source is complying with a GHG PAL that meets the requirements in 40 CFR 52.21(aa)(1) through (15). We believe that extension of the PAL program to these sources through the Minor Source Approach is consistent with the purposes and design of the PAL program—to allow use of a PAL as an alternative PSD applicability approach for existing sources.

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

[20] A source may be major for title V but minor for PSD because of the difference in applicability thresholds (*e.g.,* title V major source status may be 100 tpy on a mass basis for a particular regulated air pollutant but 250 tpy on a mass basis under PSD for the same pollutant) and/or for other reasons (*e.g.,* a source that did not trigger PSD when it commenced construction and that did not subsequently increase its emissions above any major modification threshold but still has emissions over 100 tpy on a mass basis). In such cases, the title V permit may be an available mechanism to issue such PALs. 40 CFR 52.21(aa)(2)(ix).

not have historical actual emissions from which a permitting authority can establish an actuals PAL, and so we declined to include these sources in the actuals PAL program. By contrast, because GHG-only sources are existing sources, specific sources could already have sufficient historical actual emissions data to provide the GHG information necessary to set the actuals PAL for GHGs or may be collecting data now that would allow them to establish a GHG PAL in the future. However, permitting authorities retain discretion to determine, on a case-by-case basis, whether the historical actual emissions data available for a particular source is sufficient to establish a GHG PAL.

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

Because the GHG-only source must be a minor source when it applies for its GHG PAL and will remain a minor source under this Minor Source Approach (absent any other PSD-triggering change), and will not be expected to trigger a major modification applicability analysis for future increases in non-GHG regulated NSR pollutants, we believe it is unnecessary to extend the PAL authority under this approach to other pollutants. Moreover, we recognize that extending the PAL program in that way could place a burden on permitting authorities and redirect resources needed to issue permits to other stationary sources that trigger PSD requirements for GHGs.

The Minor Source Approach of the final rule is consistent with the CAA in that it regulates sources that, but for the Tailoring Rule, would be major stationary sources based on the mass of their GHG emissions. This approach is also consistent with our Tailoring Rule principles, since we expect that the GHG PALs established under this rule would be established at levels very close to relevant GHG applicability thresholds in the Tailoring Rule. Because of the unique nature of GHG emissions, the EPA has determined that the scope of the regulatory revisions that it is finalizing to implement this Minor Source Approach for PALs is available only for a source's GHG emissions and not for non-GHG pollutants. As mentioned above, the Minor Source Approach for GHG PALs also fulfills our streamlining goals by allowing applicability determinations for PSD to occur through an alternative mechanism that helps to manage permitting authorities' long term permitting burdens.

These regulatory revisions are also consistent with our permitting authority under the CAA. As we explained in the Step 3 proposal, in the context of the Tailoring Rule, we interpret sections 165, 169 and 301 of the CAA to provide authority to issue preconstruction permits to GHG sources that do not qualify as major sources under the Tailoring Rule, but that emit or have the potential to emit GHGs at or above the statutory major source thresholds and that, without the Tailoring Rule, would qualify as ''major emitting facilities'' under the CAA. As explained in the Tailoring Rule, because the administrative burden associated with immediately implementing the PSD permitting program at statutory levels for GHGs would have crippled the program, we tailored the program and phased in the permitting requirements to ensure that the program would be administrable for GHGs. Under the Minor Source Approach that we are finalizing in this action, qualifying sources emit or have the potential to emit GHGs in levels above, and in many cases much higher than, the statutory thresholds. But for the Tailoring Rule, such sources would qualify as ''major emitting facilities'' under CAA section 169 and would be subject to PSD permitting requirements. Because the PAL provisions finalized today could also help to ensure that the PSD permitting program can be administered in an effective and efficient manner for GHGs, we interpret CAA sections 165 and 169 to convey to permitting authorities, including the EPA, the legal authority to issue GHG PAL permits to sources that qualify under the Minor Source Approach. Similarly, we interpret CAA section 301(a)(1) to provide additional authority to issue PAL permits to such sources. Accordingly, the EPA interprets sections 165, 169 and 301 of the CAA to provide the authority to issue GHG PAL permits under the Minor Source Approach as finalized in this action.

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

In this action, we are allowing permitting authorities to establish a CO_2e-based GHG PAL, and in so doing, allowing them to add up to an amount equal to the emissions increase contained in the ''subject to regulation'' applicability threshold (currently 75,000 tpy CO_2e for an existing source) to the source's baseline actual emissions to set the actuals PAL level for GHGs. We are also allowing GHG PALs, either on a mass basis or a CO_2e basis, to serve as an alternative approach for determining whether GHG emissions are subject to regulation. That is, rather than applying the emissions increase tests currently contained in the ''subject to regulation'' definition, a source could demonstrate that GHG emissions are not ''subject to regulation'' by complying with a GHG PAL. Thus, compliance with a GHG PAL would be used as an alternative approach for determining that a project neither causes GHG emissions to be subject to regulation, nor causes the source to have a major modification.

With respect to the subject to regulation determination, we believe that it is necessary to allow GHG PALs to be used as an alternative provision for making this determination, because failing to do so would negate the flexibility we wish to achieve by revising GHG PALs. This is because without these regulatory revisions, sources would still be required to monitor individual emissions changes using the procedures in 40 CFR 52.21(b)(49) to determine whether a project causes GHG emissions to be ''subject to regulation.'' If we do not allow GHG PALs to be used to determine whether GHGs are subject to regulation, these determinations would use procedures that rely on an emissions-unit-by-emissions-unit analysis and a shorter contemporaneous period to evaluate net emissions changes, neither of which are required under a PAL. This would undermine the very benefits the PAL is intended to provide, such as clarity, regulatory certainty and operational flexibility. We believe that the enhanced recordkeeping, reporting and monitoring associated with a PAL, and the environmental benefits resulting

from a PAL, warrant extension of the alternative applicability provisions to ''subject to regulation'' determinations to assure that the GHG PAL provides the intended flexibility to sources.

With respect to extending the PAL regulations to allow GHG limits to be set on a CO_2e basis, we also believe these changes provide PALs to be used for GHGs in a manner consistent with the Tailoring Rule and the purpose of the PAL program. When we originally proposed the Tailoring Rule, we proposed to include applicability thresholds within the definitions of major stationary source and major modification, based on emissions of CO_2e. We also originally proposed to establish a CO_2e-based significant emissions rate. However, in the final rule, we changed our regulatory approach and instead included these applicability thresholds within the ''subject to regulation'' definition, and we did not revise the definition of significant to include a CO_2e-based emissions rate. We did so, in part, because we intended this change in regulatory structure to facilitate more rapid adoption of the rules by permitting authorities. Nonetheless, we also explained that we intended the definition of ''subject to regulation'' to function in tandem with the definitions of ''major stationary source'' and ''major modification'' to determine whether a given project triggers PSD preconstruction permit requirements. 75 FR 31582 June 3, 2010. That is, if a source emits GHG emissions at a level that causes the emissions to become ''subject to regulation,'' that same level of emissions increase will likely cause the source to be a major stationary source and to trigger PSD requirements as a major modification. Since the PAL program for non-GHG pollutants allows actuals PAL levels to be set by adding up to the amount of the emissions that would be allowed before a project triggered PSD requirements as a major modification, we think the PAL program for GHGs should apply similarly. Accordingly, since the CO_2e-based emission increase contained in the second part of the ''subject to regulation'' definition works in tandem with the ''major modification'' provision to determine whether PSD applies, we are amending the regulations so that a CO_2e-based GHG PAL can be established by adding up to an amount equal to the CO_2e emissions increase defined as ''significant'' for the purposes of 40 CFR 52.21(b)(49)(iii) at the time the PAL permit is being issued (currently, 75,000 tpy CO_2e) to the source's baseline actual emissions.

In our proposed Tailoring Rule, we noted that, in rare instances, there may be an exception to the general principle that a GHG source exceeding the proposed 75,000 tpy CO_2e significant emissions threshold for major modification applicability would also exceed the statutory mass applicability thresholds for PSD, namely if a source emits very small amounts of a particular GHG that carries a very large global warming potential. 74 FR 55330 October 27, 2009. We noted our concern that the proposed rule could cause such sources, whose mass emissions do not meet the major stationary source tpy threshold, to nonetheless be regulated under the permit programs. When we finalized the Tailoring Rule using the subject to regulation approach, we resolved this concern by retaining both a mass-based threshold and a CO_2e-based threshold. Our intent in retaining both thresholds was to assure that there was no source with GHG emissions that were subject to PSD that would not otherwise meet the statutory criteria for treatment as a major stationary source.

This same regulatory structure can create the opposite effect for sources operating under a GHG PAL. Instead of providing GHG PAL sources with the ability to use either threshold to show that they are not undertaking a major modification and that major NSR does not apply, sources must monitor both thresholds to prove this outcome under the current rules. This is because a mass-based GHG PAL cannot assure that there is no increase in CO_2e tpy GHG. Since the Tailoring Rule requires a source to determine whether a specific action would increase the GHG emissions by a certain amount that would make them subject to regulation for PSD permitting purposes, setting a CO_2e-based GHG PAL based on the increase identified in the Tailoring Rule thresholds will require that the source does not exceed that amount and thus will insure that changes at the source would not cause an increase in GHGs emissions in an amount that would be subject to regulation and thus insures that they are not subject to PSD permitting. In addition, since the Tailoring Rule and the existing PSD regulations require similar calculation of a source's emissions to determine whether a major modification triggers PSD permitting requirements for GHGs, compliance with a mass-based PAL, which as explained earlier will not allow any increase above baseline and thus does not result in a significant emissions increase, will also insure that a source with a mass-based GHG PAL does not trigger those requirements. Expanding the GHG PAL program to allow GHG PALs to be used as an alternative method of assuring that any changes at the source are neither ''subject to regulation'' nor major modifications resolves this issue, making GHG PALs function more like PALs for non-GHG pollutants.

E. Can a GHG source that already has a mass-based GHG PAL obtain a CO_2e-based PAL?

In the Step 3 proposal, we proposed to add transition provisions to the PAL regulations that would allow a GHG source that has a mass-based GHG PAL to convert to a CO_2e-based GHG PAL once, at the source's option, and if agreed to by the permitting authority. However, public comments indicate that there is no pressing need for such a transition provision at this time. As a result, we are not finalizing that segment of the proposal at this time. We are also not aware of any mass-based PALs that have been issued or are being reviewed by any permitting authorities that may need such transition provisions. If the need for such a transition provision arises in the future; we can address it as part of our future streamlining actions. Streamlining continues to be a key element to our phased-in approach to GHG permitting and we fully intend to move forward expeditiously with developing additional streamlining approaches.

VII. Comment and Response

In this section, we briefly summarize and respond to some key comments we received during the comment period. We describe in detail these and other comments as well as our responses in the Response to Comments document to this rule, which can be found in the docket for this rulemaking under Docket No. EPA–HQ–OAR–2009–0517.

A. Thresholds for GHGs

We received dozens of comments, including 90 from individual citizens, on the proposed Step 3 rulemaking. The majority of the commenters other than individual citizens were from industry, and most of these comments supported the proposal not to lower the GHG thresholds. Some of these commenters made clear that they supported maintaining these applicability thresholds only if the DC Circuit upholds the Tailoring Rule against the current legal challenges and only as long as the EPA requires GHG permitting under PSD. Reasons supporting not lowering the Step 1 and 2 thresholds included the lack of permitting authorities' ability to fully implement the program at (or closer to)

statutory applicability thresholds, the lack of implementation of effective permit streamlining measures at this time and the inability of sources to cope with regulatory burdens. In addition, several state and local agency commenters supported the current thresholds, citing the need for increased resources, a large learning curve and little incremental air quality benefit in the control of GHGs. We appreciate these comments, and in some cases they provided additional information concerning state permitting administration and possible reasons for the less-than-expected numbers of permit applications that we have incorporated into our rationale. Two environmental advocacy organization commenters, one of which consisted of a group of national organizations, opposed the proposal, and we discuss their comments in detail immediately below.

Environmental advocacy organization commenters stated that for the EPA to justify not lowering the current Tailoring Rule thresholds, ''the doctrine of administrative necessity requires that EPA provide evidence of continuing administrative impossibility,'' and therefore the EPA must provide data demonstrating that lowering thresholds would create administrative impossibilities. In addition, these commenters raised concerns about some of the specific aspects of the three criteria. For example, with respect to the criterion of whether states have had the time to increase their permitting resources, the commenters cautioned that the EPA should not ''attempt to rely on a decision by one or more state legislatures to underfund CAA programs as evidence of 'administrative necessity.' ''

In addition, the environmental advocacy organization commenters stressed that the actual permitting activity has been much less than the EPA's methodology estimated, and stated, ''[w]here estimates of permitting burdens conflict with actual experience, the agency must update its methods for assessing administrative loads based on the actual experience of permitting agencies to date.'' The commenters stated that the EPA's claims that macro-economic fluctuations were the cause of the unexpectedly low level of permitting could not be supported. One of the commenters further stated that the EPA could not rely on the three criteria it identified to justify maintaining the thresholds because ''[t]hese criteria are pertinent only in the face of evidence that the permitting demand continues to exceed capacity by a significant amount * * * EPA's current record does not so demonstrate.'' This commenter asserted that in the Step 3 proposal, the ''EPA has not provided sufficient justification for its conclusion that the permitting load faced by permitting agencies warrants maintenance of the current thresholds for the period covered by Step 3. While maintenance of the current applicability thresholds for GHG emissions may be justified by a record demonstrating continued administrative necessity, the EPA has not yet provided sufficient evidence in its proposed action.'' This commenter concluded that the EPA ''may wish to consider a supplementary proposal or notice of data availability that ensures adequate and transparent notice to stakeholders with adequate opportunity to comment.'' The other commenter asserted that the limited amount of actual permitting means that the three criteria either are not required to have been met or in fact have been met. This other commenter concluded that the EPA was required to lower the thresholds.

1. Narrow Scope of Step 3

a. Summary

The EPA disagrees with the environmental advocacy organization commenters' views that in Step 3, the EPA must justify maintaining the current thresholds on grounds of administrative necessity. In brief, the structure of the Tailoring Rule's multi-step phase-in process makes clear that Step 3 is a narrow action designed to afford the EPA the opportunity to lower the Tailoring Rule thresholds shortly after promulgating the Tailoring Rule if certain specific events were to happen. Those events, which are reflected in the three criteria the EPA articulated as the basis for Step 3, concern improvement in state resources and expertise as well as the development of streamlining methods. Under these circumstances, it would not have been appropriate to wait several years, until the EPA completed the 5-year study and then promulgated Step 4, before lowering the thresholds. Importantly, Step 3 occurs too soon after the Tailoring Rule to permit a more fundamental review of the data and methodology underlying the EPA's estimates of permitting burdens. That more fundamental review, to the extent needed, could occur during the 5-year study and Step 4 that are required several years later, in 2015 and 2016, respectively. The terms of the Tailoring Rule regulatory provisions and the discussion in the rule's preamble concerning this phase-in approach—Step 3, the 5-year study and Step 4—as interpreted by the EPA, confirm the narrowness of Step 3. As a result, the EPA is authorized to proceed with Step 3 as we do in this rulemaking, which is by applying the three criteria to determine whether to lower the thresholds.

b. Discussion

Step 3 can be best understood when viewed in the overall context of the phase-in process. The following is the schedule that the EPA established in the Tailoring Rule for the phase-in process, including Step 3 and subsequent action:

June 3, 2010: Tailoring Rule is published in the **Federal Register**.
January 2, 2011: Step 1 takes effect.
July 1, 2011: Step 2 takes effect.
July 1, 2012: Title V permit applications are due for sources that become subject to Step 2.
July 1, 2012: The EPA completes Step 3.
July 1, 2013: Step 3 takes effect.
April 30, 2015: The EPA completes 5-year study.
April 30, 2016: The EPA completes Step 4.

40 CFR 52.22(b).

In the first instance, Step 3's narrowness is clear from its timing, so soon after Steps 1 and 2. In promulgating the Tailoring Rule, which included Steps 1 and 2, the EPA undertook a robust analysis of administrative necessity. This analysis included compiling several sets of data and developing a complex, multi-component methodology, all of which were fully vetted through the Tailoring Rule process.

The EPA scheduled Step 3 shortly after the promulgation of Steps 1 and 2. Under this schedule, the EPA would promulgate Step 3 on the same day as the close of the first full year that Step 2 would have been in effect. As noted, Step 3's purpose was to provide a vehicle for the prompt lowering of the thresholds if certain events occurred by that time—state resources or expertise increased significantly, or the EPA was able to streamline permitting—so as to avoid a delay of some 4 years until the promulgation of Step 4 before lowering the thresholds. The EPA never intended that Step 3 entail a broad review of the underlying data sets and methodology for assessing permitting burden. Step 3 is simply too soon after the promulgation of the Tailoring Rule, and too soon after Step 2, for the EPA to have acquired and evaluated sufficient information to be able to review and revise the data and methodology.

The narrowness of Step 3 is also clear from the EPA's description of it in the Tailoring Rule regulations and preamble. The regulations establish Step 3 in a paragraph entitled, ''Near-term

Action on GHGs,'' and describe it as follows: ''The Administrator shall solicit comment, under section 307(b) of the Act, on promulgating lower GHGs thresholds for PSD applicability.'' 40 CFR 52.22(b)(1). The Tailoring Rule preamble elaborated as follows:

> [The] EPA includes an enforceable commitment to undertake a notice-and-comment rulemaking that would begin with [a supplemental notice of proposed rulemaking] that we expect to be issued in 2011 and that we commit will be finalized in 2012. The notice will propose or solicit comment on further reductions in the applicability levels. This rulemaking will take effect by July 1, 2013 and therefore, in effect, constitute [sic: constitutes] Step 3. In this [Tailoring Rule] action, we are committing to a rulemaking for Step 3, but are not promulgating Step 3, because it is important to allow EPA and the permitting authorities to gain experience permitting sources under Steps 1 and 2, and to allow time to develop streamlining methods, before attempting to determine what would be the next phase-in levels for PSD and title V applicability.

75 FR 31572 June 3, 2010. As noted above, the preamble went on to explicitly identify three criteria for the EPA to evaluate in Step 3 to determine whether to lower the thresholds, which concerned progress in permitting authorities' acquiring resources and developing expertise, as well as the EPA's and the permitting authorities' progress in developing streamlining measures. 75 FR 31559 June 3, 2010. The EPA interprets these regulations and preamble discussion to make clear that the EPA designed Step 3 narrowly as an opportunity to lower the thresholds very soon after finalizing the Tailoring Rule, if PSD and title V implementation for GHGs was on track and if certain events were unfolding in a way that allowed permitting at a lower threshold. We note that courts grant an administrative agency the highest level of deference in interpreting the agency's own regulations. *Auer* v. *Robbins,* 519 U.S. 452, 461 (1997).

Our interpretation of the Step 3 provisions finds support by contrasting them with the provisions for Step 4. The regulations establish Step 4 in a paragraph titled, ''Further Study and Action on GHGs.'' 40 CFR 51.22(b)(2), 40 CFR 70.12(b)(2). Importantly, the regulations make clear that Step 4 is to be preceded by, and must be based on, an assessment—which we call the 5-year study—that must be completed by April 30, 2015. That study is to be wide-ranging: The regulations describe it as ''a study projecting the administrative burdens'' of regulating sources below the then-existing thresholds. 40 CFR 52.22(b)(2)(i), 40 CFR 70.12(b)(2)(i). The regulations go on to describe Step 4 as a rule that is ''[b]ased on the results of the study'' and ''address[es] the permitting obligations of such sources,'' and that must be finalized by April 30, 2016. 40 CFR 52.22(b)(2)(ii), 40 CFR 70.12(b)(2)(ii).

Step 4's provisions, along with its timing, make clear that it has a broader scope than Step 3. By the time of the 5-year study, several years of implementation of GHG permitting will have occurred, and as a result, the EPA will have a more robust set of data concerning various aspects of implementation and the EPA's methodology. As noted, in the study, the EPA must evaluate that data as appropriate and ''project[] * * * administrative burdens.'' The EPA must then conduct the Step 4 rulemaking based on the study. All this makes clear that Step 4 provides a greater opportunity for evaluating administrative necessity, as appropriate, but Step 3, in contrast, is designed more narrowly.

That Step 3 has a narrow scope is further made clear by reference to the separate provision in the Tailoring Rule regulations that under no circumstances will the EPA lower the thresholds below the 50,000/50,000 tpy CO_2e level before April 30, 2016. 40 CFR 52.22(b)(2)(iii), 40 CFR 70.12(b)(2)(iii). This provision means that the EPA would not lower the thresholds below those levels during Step 3. The environmental advocacy organization commenters did not comment that the EPA was free to disregard this limit in Step 3, and as a result, those commenters appeared at least implicitly to accept that this limit does constrain whatever action the EPA may take in Step 3. It is the EPA's interpretation that just as the EPA narrowed Step 3 by establishing the 50,000/50,000 tpy CO_2e floor, the EPA also narrowed the scope of Step 3 to be limited to the three criteria, described above. In addition, the presence of this 50,000/50,000 tpy CO_2e limit contradicts commenters' argument that the EPA should be required to make a new showing of administrative impossibility in Step 3. It would be illogical for the EPA to be required to conduct a new evaluation of administrative burdens and a new showing of administrative impossibility in Step 3 if the EPA had already decided that no matter what the evaluation of administrative burdens revealed, Step 3 could not result in thresholds below the 50,000/50,000 tpy CO_2e level.

The environmental advocacy organization commenters emphasize the imperatives of the administrative necessity doctrine, and we fully recognize those imperatives. We discussed the administrative necessity doctrine at length in the proposed and final Tailoring Rule preambles, and we concluded that the doctrine authorized us to promulgate the Tailoring Rule only on the basis that we would phase in the PSD and title V applicability thresholds as quickly as possible and as closely as possible to the statutory 100/250 tpy levels. But we are authorized to create a structure for this phase-in process to achieve the overall goal, and in doing so, we may design a particular step to achieve a particular effect. We designed Step 3 narrowly to provide an opportunity to adjust the thresholds soon after promulgating them if certain events transpired. This is consistent with, and could help assure the success of, the overall phase-in process. Contrary to the environmental advocacy organization commenters' comments, Step 3 does not necessarily entail a re-analysis of administrative burdens or a new showing of administrative impossibility simply because Step 3 is an action that the EPA is taking within an overall context that involves the administrative necessity doctrine.

2. The Three Criteria

The EPA disagrees with various comments by the environmental advocacy organization commenters concerning the specifics of the three criteria for lowering the Tailoring Rule thresholds. With respect to their comment on the criterion of state resources, we acknowledge their concern as to whether a state could in effect manipulate the first criterion in the manner they suggest by underfunding the state environmental agency. However, we apply this criterion on a nationwide basis, so that we examine whether the states taken as a whole have increased their resources. At proposal, we noted evidence that because of the recent economic downturn and slow recovery, state environmental agencies across the country have generally seen budget reductions. This includes agencies in states that have moved forward to regulate GHGs in other ways. Applying this criterion on a nationwide basis minimizes concerns about a particular state seeking to underfund its environmental agency.[21]

[21] We recognize that on a nationwide basis, state budget pressures have resulted from recent macroeconomic conditions, and that with ongoing economic growth, state budgets may be expected to increase. But at present, we remain concerned that on a nationwide basis, the capacity of state and local permitting authorities for GHG permitting may be less than what we expected at the time of the

Continued

3. Disparity Between Estimated and Actual Numbers of Permits

We recognize the disparity that the environmental advocacy organization commenters stress between the estimated and actual permitting. However, we disagree that this disparity obliges us to reconsider the Tailoring Rule data and methodology during Step 3. For the reasons described above, Step 3 has a narrow scope: it is limited to the three criteria and as a result, it does not entail a review of the underlying data and methodology.

a. No Re-Opening of Methodology

In addition, we made clear in the Step 3 proposal that we would not re-open the methodology in this rulemaking:

> [I]n this rulemaking, we are relying on the same methodology used in the Tailoring Rule to calculate administrative burdens, and we are not re-opening that methodology or soliciting comment on it. We are simply proposing action and soliciting comment on Step 3 of the phase-in approach.

77 FR 14255 March 8, 2012. We affirm here that we are not re-opening the data and methodology.

b. Reasons for Not Reconsidering Data Sets and Methodology

Although we are not re-opening the data and methodology, for the sake of completeness, we will respond directly to concerns expressed by the commenters. Even if we were prepared to re-open the data and methodology, we would conclude that notwithstanding the disparity commenters emphasize, they have not provided, and we do not have, sufficient information to be able to conduct a review and revision of the data and methodology at this time.

(1) Summary

In the Tailoring Rule, our analysis of administrative burden was rendered complex by the need to account for many different types of permitting activity. We had to rely on several different sources of data and we had to develop a complex and multi-component methodology, with numerous assumptions and estimates. The sources of data were the best available, the assumptions in the methodology were reasonable and, importantly, all were fully vetted through the Tailoring Rule process. No one commented that the data and methodology over-estimated the amount of permitting burden, and no one brought such a challenge after promulgation.

In this Step 3 rulemaking, environmental advocacy organization commenters pointed out the disparity between the expected and actual number of GHG permit actions, but they did not challenge any specific aspects of this data and methodology. Thus, it remains possible that at least part of the disparity is temporary, due to macro-economic conditions and other factors. Even if the disparity has occurred because the data and methodology do contain inaccuracies that yield an over-estimate of the number of GHG permits, such inaccuracies must be considered in the context of the overall administrative burden due to GHG permitting. This burden also entails the amount of per-permit processing costs and other components of permitting administration, such as minor source permitting. Therefore, even if we were to conclude that actual data show an overestimate in the number of GHG permits, we are not in a position at present to attempt to lower the applicability thresholds.

We have little information as to the amount of any overestimate in actual permits. Other information may suggest that we have not accounted for certain other components of permitting administration—such as additional synthetic minor source permitting—which points towards an under-estimate of GHG-related permitting burden. And most broadly, we may well receive new information over time concerning other aspects of our data sets and methodology that may point towards adjustments in overall permitting burden and, ultimately, in the applicable thresholds, even though at present, we cannot predict the direction and extent of those adjustments. As a result, attempting to make an adjustment at this time to permitting thresholds based on the current information concerning numbers of GHG permits would amount to a piecemeal approach that would create significant uncertainty for the permitting authorities and regulated community, and we decline to adopt it. For all these reasons, it would be premature to attempt to lower the permitting thresholds based on the partial information we have concerning numbers of GHG permits.

(2) Discussion

At the outset, it must be emphasized that in the Tailoring Rule, our analysis of administrative burden was rendered complex by the fact that there are many different types of sources (that is, many different types of industrial sources as well as commercial and residential sources), many different sizes of sources (that is, minor and major sources, and many sizes of major sources), two types of activity that trigger PSD (that is, new construction and modifications), two types of sources based on their association with the PSD and title V programs (that is, ''anyway'' sources that are subject to PSD and title V anyway due to their non-GHG emissions, and GHG-only sources for whom the PSD or title V requirements are triggered solely because of their GHG emissions) and two permitting programs (that is, PSD and title V). To estimate the administrative burdens associated with the full range of GHG permitting activity, we had to rely on several different sources of data concerning the amounts of PSD and title V permitting activity and a complex and multi-component methodology, which in turn included many assumptions and estimates. The data sets and methodology were fully vetted through the Tailoring Rule process. At proposal, no one commented that the data and methodology overestimated the amount of GHG permitting burden. On the contrary, stakeholders commented that the EPA had significantly underestimated the numbers of permits and per-permit costs. Based on those comments and the EPA's further analysis, the EPA revised its methodology to substantially increase the expected number of GHG permitting actions and the amount of time the permitting authorities would need to process some of them. Following promulgation of the Tailoring Rule, no one sought administrative reconsideration or a court challenge of the data and methodology.

Although environmental advocacy organization commenters have pointed out the disparity between the total number of expected annual permits, based on the EPA's methodology, and the total actual number, these commenters did not provide any specific information that casts doubt on any particular aspect of the data and methodology.

In the absence of such information, there are several possible explanations for the disparity. It is possible that the unexpectedly small amount of permit activity is at least in part a temporary phenomenon due, as discussed in the proposal, to prospective permittees having accelerated their applications to 2010 to avoid GHG PSD requirements, or, as noted above, to recent macro-economic conditions. In addition, industry commenters have stated because GHG permitting is still in its initial stage, some sources have taken a

Tailoring Rule, and that possible diminution of capacity at least partly offsets the less-than-expected number of permitting actions.

wait-and-see approach before undertaking new construction or modifications, and that has resulted in fewer permit applications. Another factor is the possibility that some of the smaller sources that have never before been subject to the PSD program, but that are now subject to GHG PSD permitting requirements, are unaware of their permitting obligations. Most generally, as we noted in the Step 3 proposal, some officials in several states have stated that they thought the pace of GHG permitting would increase above the pace observed in 2011. Even so, we recognize that it is also possible that some aspects of the data sets and methodology do contain inaccuracies that may point towards overestimation of the number of GHG permits. During the Tailoring Rule, we did acknowledge uncertainties in many aspects of the methodology, which were discussed in the primary technical support document that described the methodology.[22]

However, the possibility that we over-estimated numbers of GHG permits due to inaccuracies in the data or methodology must be considered in the context of the overall administrative burden due to GHG permitting. This burden entails not only (1) the number of GHG permits; but also (2) the amount of per-permit processing costs; and (3) other components of GHG permitting administration, which include minor source permitting, hiring and training, outreach and education as well as enforcement actions. Viewed in this context, it is clear that even if we were to conclude that actual data shows an overestimate in the number of GHG permits, we are not in a position at present to attempt to lower the applicability thresholds, as an environmental advocacy organization commenter urged.

There are several reasons: First, we do not know the amount of any overestimate, in light of the fact that at least some of it may be due to macro-economic conditions and other factors; and in addition, the information that we have concerning the number of GHG permits actually issued provides little insight into which of the many data points or assumptions and estimates in the methodology may have led to the overestimate. This means we do not have enough information to adjust the estimates of overall permitting burden or the applicable thresholds.

Second, the information concerning numbers of permits tells only part of the overall administrative-burden story. Over time, we may well receive other information that may suggest that our data sets and methodology do not account for certain components of permitting administration, which point towards an under-estimate of permitting burden. For example, our methodology does not account for the permitting burdens resulting from permitting synthetic minor sources that seek to avoid GHG requirements, staff hiring and training, public education and outreach to sources and enforcement. 75 FR 31571 June 3, 2010.

Third and most broadly, we must recognize that we may receive more information over time that may shed light on the accuracy of various aspects of our methodology. This is true not only for the numbers of permits that we estimate and other components of the GHG permitting program, but also for the estimates of the per-permit costs to the permitting authorities. For example, GHG-only sources have not been required to submit their Step 2 title V permit applications until July 1, 2012, and as a result, we have little actual information concerning numbers of title V permits or other aspects of title V permitting. As noted, to this point, little information has been provided to the EPA to specifically verify or call into question the many data sets or estimates and assumptions in the methodology. As a result, even if the EPA had sufficient information to conclude that specific aspects of its methodology contained inaccuracies that pointed in the direction of over-estimating administrative permit burden, that information would affect only part of overall administrative burden, and it would be premature to attempt to adjust the permitting thresholds based solely on that partial information. Soon thereafter, the EPA could acquire additional information indicating that other aspects of its methodology were also inaccurate, and that information would lead to calls for the EPA to continue to revise the data sets and methodology whenever additional information became available that pointed towards a different burden estimate and therefore a different threshold. Such a piecemeal approach would create significant uncertainty for the permitting authorities and regulated community, and we decline to adopt it.

We also disagree with another environmental advocacy organization's comment that the EPA should consider issuing ''a supplemental notice of proposed rulemaking or notice of data availability that ensures adequate and transparent notice to stakeholders with adequate opportunity to comment,'' in lieu of finalizing Step 3 at this time. Even if there is a basis to believe that the methodology for estimating PSD GHG permitting burden may be inaccurate, it is reasonable for the EPA to finalize at this time the Step 3 rulemaking as proposed, thereby determining not to lower the thresholds. This will maintain the schedule for action already established in the regulations promulgated during the Tailoring Rule. In particular, the EPA is already obligated to undertake the 5-year study, to be followed by Step 4, which will afford the opportunity to review and revise the data sets and methodology, as appropriate, on a schedule that can accommodate any need to gather and analyze data. Importantly, this schedule will also accommodate the development of GHG permitting under title V, including the collection and analysis of information concerning progress. This approach of conducting any necessary review during the 5-year study and Step 4 will avoid uncertainty concerning the timing of when the EPA may lower the thresholds.

The key to our decision to proceed at this juncture is the fact that under the regulations we promulgated during the Tailoring Rule, we are already obligated to undertake the 5-year study by April 30, 2015 and to finalize Step 4 by April 30, 2016. In the Tailoring Rule regulations, we described the study as ''a study projecting the administrative burdens'' of regulating sources below the then-existing thresholds, 40 CFR 52.22(b)(2)(i), and in the Tailoring Rule preamble we added to that description the following:

> In this action, EPA is also finalizing its proposal to commit to conduct an assessment of the threshold levels—to be completed in 2015, 5 years after this action—that will examine the permitting authorities' progress in implementing the PSD and title V programs for GHG sources as well as EPA's and the permitting authorities' progress in developing streamlining methods. We further commit to undertake another round of rulemaking—beginning after the assessment is done, and to be completed by April 30, 2016—to address smaller sources.

75 FR 31573 June 3, 2010. We went on to point out that the timing of the 5-year study and Step 4 was consistent with our development of streamlining methods, some of which would require rulemaking, and therefore would take several years. 75 FR 31573 June 3, 2010.

This schedule for the 5-year study and Step 4 rulemaking will also facilitate a

[22] ''Summary of Methodology and Data Used to Estimate Burden Relief and Evaluate Resource Requirements at Alternative Greenhouse Gas (GHG) Permitting Thresholds'' (March 2010), included as Attachment C to the ''Regulatory Impact Analysis for the Final Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule: Final Report'' (May 2010), Docket No. EPA–HQ–OAR–2009–0517–19161.

robust collection and review of data, as appropriate. In the Tailoring Rule, the EPA calculated the administrative burdens of GHG permitting based on data for (1) the numbers and types of PSD and title V GHG permitting actions—*e.g.,* new construction and modifications, ''anyway'' sources and GHG-only sources—and (2) the expected processing time for the different types of GHG permits. The sets of data that were available to us at the time of the Tailoring Rule—which remain the only data available to us—were the foundation for our calculations. If the reason why permit activity to this point has been lower than expected is due to inaccuracies in those data, then we will need to correct the data based on the actual experience of the permitting authorities.

Because GHG permitting is a new addition to the PSD program, we believe that we would need 2 full years (July 1, 2012 to June 30, 2014) of the above-described data about the GHG permitting, after the initial, ''start-up'' year (July 1, 2011 to June 30, 2012). Data from the initial year would be valuable, but because GHG permitting is new, the initial year may well have involved some inefficiencies and a learning curve. As a result, the initial year may not be considered to be representative of a permitting authority's normal administration of the permitting program. Moreover, we believe that 2 full years of data are necessary to accurately reflect representative operations, particularly since the program is new. For example, if we were to select the number of permits issued as a measure of permitting activity, that number may vary widely over a several-month period, and that could skew the total for a particular year, but that variability would have less of an impact over a 2-year period. We would expect to be able to collect this data from the 2-year period in time to complete the 5-year study that is due by April 30, 2015. Following the study, we would be able to conduct the Step 4 rulemaking by the required April 30, 2016 completion date.

We disagree with the suggestion from the environmental advocacy organization commenter that we consider issuing a supplemental notice of proposed rulemaking at this time, instead of finalizing Step 3. The commenter did not describe what information it expected could be obtained through a supplemental notice of proposed rulemaking. We see little value to such an action at this time. If the reason for the unexpectedly low level of permit activity is inaccuracies in our data sets or methodology, as the commenter suggests, then the best way to address that is through the 5-year study, as described. That process allows a robust review. If the problem turns out to be inaccuracies in the data set or methodology, we believe it is better to have the opportunity to collect a comprehensive set of data.

Another reason why we decline commenter's suggestion to delay completing Step 3 and issue a supplemental notice of proposed rulemaking is that any such delay would put pressure on the time frame for the 5-year study and Step 4, in light of how quickly they follow Step 3, and that would create uncertainty for sources and state or local permitting authorities. We note that delaying completion of Step 3 and the final action we take on Step 3 in this rulemaking both have the same effect, which is to leave in place the Step 2 thresholds. Completing Step 3 now allows us to remain on track for the 5-year study and Step 4, as prescribed in the regulations. We think it is unlikely that delaying completion of Step 3, as commenters suggest, would lead to a lowering of thresholds sooner than Step 4 because we do not believe the information collected could be sufficiently robust to serve as the basis of lowering the thresholds.

In summary, we recognize the environmental advocacy organization commenters' concerns that there is a disparity between the estimates of permits issued and the actual numbers of permits issued to date. If this disparity persists, it will deepen concerns about whether the Tailoring Rule data sets or methodology overestimated permitting burden. However, we also recognize other indications that suggest that our methodology may have under-estimated permitting burden in other respects, and we also recognize that to this point, with the first full year of Step 2 only just now concluding, we do not have any more information than we had when we promulgated the Tailoring Rule about many aspects of our data sets and methodology that we have acknowledged entail uncertainty. By the same token, the great majority of title V permitting activity is only now just about to begin, and therefore we have little information about it. Title V permitting activity is important for purposes of not just title V permitting burdens but also PSD permitting burdens because permitting authorities generally administer the two programs in close relation to each other.

Accordingly, we intend to collect information concerning recent, current and future permitting activity in the states. We also intend to review information available to us from other sources, such as the Greenhouse Gas Mandatory Reporting Rule. Our goal would be to collect data that would help us analyze how the various estimates in our methodology vary from actual experience and how we can refine our analysis. With this approach, as we conduct the 5-year study (due to be completed by April 30, 2015), we would have data concerning permitting activity over both (1) the 2-year period when Step 2 will have been in full swing (July 1, 2012 to June 30, 2014), as well as (2) the earlier start-up period (January 2, 2011 to June 30, 2012).

If we find that a significant disparity between estimated and actual numbers of permit actions has persisted, or if significant disparities have become apparent between other aspects of our methodology and actual permitting experience, we would expect to address those disparities and the relevant aspects of our methodology in the 5-year study. In this event, in Step 4, we would review and revise our data and methodology as appropriate. Based on that review and revision, we would review and revise, as appropriate, the administrative burden estimates and the applicability thresholds that are based on those burden estimates.

B. Plantwide Applicability Limitations for GHGs

We received dozens of comments, including many from the regulated community and individual permitting authorities, on the proposed changes to the PALs provisions to better address GHGs. As explained above, we are providing a general summary of those comments, as well as providing responses to a few key comments in this section. We discuss the comments received and our responses in more detail in the Response to Comments document that appears in the docket for this final rule.

As a general matter, many commenters on the proposal expressed general support for the concept of GHG PALs, although some had misgivings about some aspects of the proposal. Supporters indicated that GHG PALs can streamline PSD permitting and reduce administrative burden for some sources, and most thought that the Minor Source Approach would be more beneficial and less burdensome than the Major Source Opt-In Approach. Some comments stated that GHG PALs will have advantages, including leading sources to minimize emissions to create room for later expansion, providing certainty for planning purposes, helping address changing market conditions and

reducing overall workload over the term of the permit. Several commenters stated that PALs for GHGs would be consistent with the treatment of other regulated NSR pollutants in the PSD programs. Other commenters indicated that using GHG PALs as an alternative for determining whether GHGs are subject to regulation and whether a project is a major modification for purposes of permitting is appropriate, and one elaborated that use of PALs will provide assurance that GHGs are not subject to regulation and will not trigger a major modification. On the other hand, several commenters generally opposed the GHG PAL proposal, stating that they do not believe that the EPA had provided an appropriate basis for changing the existing PAL program to address GHGs or that such changes were necessary. One commenter stated that the GHG PAL proposal offers little streamlining and only complicates permitting.

While we did not identify PALs as a viable streamlining technique for GHG sources in the Tailoring Rule, since we finalized that rule, we have recognized that plant-wide limitations could be designed in a way that would be useful for easing administration of GHG permitting and are adopting changes to the existing PAL regulations to address the unique PSD applicability issues associated with GHGs. After reviewing the comments received, we believe finalization of the changes to allow permitting of GHG PALs using the Minor Source Approach and on a CO_2e basis, including the option to use the CO_2e-based applicability thresholds provided in the subject to regulation definition in setting the PAL, will provide for better implementation of PALs for GHGs, is consistent with the approach to GHG permitting described in the Tailoring Rule and thus can play a relevant role in our strategy for developing streamlining options for permitting authorities to help ease the administrative burdens associated with GHG permitting for sources and permitting authorities alike. To the extent that some commenters oppose the use of PALs generally, we note that use of PALs as an alternative NSR applicability mechanism and the basic elements of PAL permits have already been upheld. *New York* v. *EPA,* 413 F.3d 3, 36–38 (D.C. Cir. 2005). The changes the EPA is finalizing to make implementation of that mechanism more useful as applied to GHGs are consistent with that decision, as well as the Tailoring Rule. Aside from the specific GHG-based revisions to the PAL provisions that the EPA is promulgating in this action, the EPA did not seek comment on, or otherwise re-open the existing PAL provisions, so any comments on non-GHG PAL-related issues are outside the scope of this rulemaking.

Many commenters (including commenters that both supported and opposed GHG PALs) stated that specific regulatory text for GHG PALs must be made available to allow for effective and meaningful comment on the proposal. Many of these commenters indicated that proposed GHG PAL language must be subject to notice and comment rulemaking before the EPA can finalize the GHG-specific changes to the PAL provisions, and some stated that the description in the proposal was insufficient to provide notice of the intended changes to the PAL regulations. Commenters stated that the EPA should issue a re-proposal for the GHG PAL revisions and include proposed regulatory text for public notice and comment. Other commenters, however, indicated that the PAL provisions should be finalized as soon as possible.

The EPA disagrees with the comments arguing that the EPA must provide notice-and-comment of specific regulatory text for its proposed GHG PALs changes before taking final action. The EPA notes that the CAA provisions contained in section 307, which govern rulemakings such as this, do not explicitly require the Agency to propose specific regulatory text as part of that process. In addition, the Administrative Procedure Act (APA) requires simply that ''either the terms or substance of the proposed rule or a description of the subjects and issues involved'' be included in a notice of proposed rulemaking. We believe that the notice and opportunity for comment provided for the GHG PALs proposal was sufficient to satisfy the requirements of the APA and CAA, and as explained below, we believe that we have provided adequate notice of the changes we are making to the PAL provisions to give a meaningful opportunity for comment on those changes.

In the Step 3 proposal, we described the various changes we were proposing in detail (including a description of the Minor Source Approach that we are finalizing today), and included a description of how we intended to extend PALs to GHGs on a CO_2e basis and a description of how we proposed to allow the use of PALs to determine whether GHG emissions are subject to regulation. 77 FR 14239 March 8, 2012. The Step 3 proposal also gave notice that we would revise a number of existing regulatory provisions to implement the approach selected. 77 FR 14244 March 8, 2012. In addition, we highlighted specific provisions of the PALs that we proposed to change and explained how we proposed to change those provisions. 77 FR 14244 March 8, 2012. For instance, we explained that for the Minor Source Approach, we proposed to revise the PAL applicability provisions in 40 CFR 52.21(aa)(1) to include GHG-only sources. *Id.* We further explained that we proposed to change the ''subject to regulation'' definition at 40 CFR 52.21(b)(49) and the PAL applicability section in 40 CFR 52.21(aa)(1) to indicate that a source that complies with a GHG PAL will not be ''subject to regulation'' for GHGs. *Id.* In addition, we explained that we proposed to revise 40 CFR 52.21(aa)(6) to allow PALs issued on a CO_2e basis to include the 75,000 tpy CO_2e emissions increase from the applicability thresholds, so that amount could be added to baseline actual emissions in setting the level of the PAL. *Id.* While we are making GHG-specific revisions to a number of other regulatory provisions in the PAL regulations, these changes simply implement the same regulatory revisions that we described repeatedly in the proposal—*i.e.,* making GHG PALs available on a CO_2e and mass basis, allowing a CO_2e-based PAL to include an emissions increase based on Tailoring Rule thresholds and the Minor Source Approach. Although the proposal did not list every specific provision we are revising in this final rule, each of these changes has the effect of implementing the GHG PAL approach described in the proposal and many of those changes are fairly small (for example, inserting ''GHG-only source'' to provisions that currently list only ''major stationary source''). Accordingly, our proposal provided sufficient information on the regulatory changes that we are finalizing in this action that allowed for public notice and comment.

We further note that the comments raising concerns about the adequacy of the notice for the GHG PAL revisions did not identify any particular aspect of the revisions that we are finalizing in this action that were not adequately explained in the proposal to allow for comment. In fact, despite the general notice concerns raised by commenters, many commenters did provide detailed comments on our proposed changes to the PAL provisions. We also note that while one comment indicated that the description of the proposed conversion from a mass-based PAL to a CO_2e-based PAL was too opaque for meaningful comment, that comment is not relevant

to this final action because we are not taking action on that proposed change.

For these reasons, we believe that we have provided sufficient notice and opportunity for comment on the revisions to the regulatory provisions for GHG PALs that we are adopting in this action.

A number of commenters also requested that the EPA provide clarification that the proposed changes to address GHG PALs in the federal regulations would not impact existing state authority to issue PAL permits for GHG emissions or existing GHG PAL permits that might have already been issued. In this action, we are finalizing revisions to certain sections of the federal regulations governing the issuance of permits pursuant to federal authority at 40 CFR 52.21, in particular the provisions relating to PALs at 40 CFR 52.21(aa) and provisions relating to the definition of ''subject to regulation'' at 40 CFR 52.21(b)(49). These provisions govern permits issued pursuant to federal authority, and, accordingly, these changes would only affect permits issued under federal authority *(i.e.,* those issued by the EPA or a delegated state or local agency). We do not intend these changes to 40 CFR 52.21 to affect existing state authority to issue PAL permits, and nothing in this action would require permitting authorities to take any action with respect to their existing PAL regulations or any existing PAL permits. We also note that these revisions are not minimum program requirements that must be adopted by states into their EPA-approved SIP PSD permitting programs. Accordingly, this final rule does not adopt these changes into the existing PAL provisions contained in 40 CFR 51.166, but nothing in this action is intended to restrict states from adopting these, or similar, changes into their SIP-approved PAL program if they choose to do so. Moreover, to the extent that states with existing PAL permitting programs have interpreted their PAL provisions to allow PAL permits to be issued on a CO_2e basis and for a PAL to be set at a level that reflects baseline actual emissions plus a 75,000 tpy CO_2e emissions increase, the changes that the EPA is making to the PAL regulations in 40 CFR 52.21 are not intended to change those existing state interpretations. Accordingly, the changes that the EPA is finalizing to address GHG PALs in the federal regulations do not, as a general matter, impact existing state authority to issue PAL permits for GHG emissions or existing GHG PAL permits that might have already been issued.

VIII. Statutory and Executive Order Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule 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 size standards (*see* 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

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

The final rule would not change the existing GHG permitting thresholds, and therefore would not impose any additional burden on any sources (including small entities) to obtain PSD or title V permits or on any permitting authorities (including small entities, if any) to issue such permits. The final provisions for GHG PALs could have the effect of reducing permitting burden on all entities, including small entities, in that the burden associated with obtaining or issuing a PAL permit could be more than offset through avoiding subsequent PSD permitting actions with greater associated burden. Moreover, the decision of any source (including small entities) to request a GHG PAL and the decision of any permitting authority (including small entities) to either adopt the GHG PAL regulations or issue a GHG PAL are completely voluntary. No source is required to seek a PAL and no permitting authority is required to issue a PAL, so there is no requirement for any entity (including a small entity) to use these rules if it believes the GHG PAL would not relieve burden. We have therefore concluded that today's final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

This rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any 1 year. The final rule will not change the existing GHG permitting thresholds, and

therefore will not impose any additional burden on sources to obtain PSD or title V permits or on permitting authorities to issue such permits. Moreover, the decisions of state, local and tribal governments to adopt the GHG PAL provisions generally and to issue a GHG PAL to any specific permitting action are completely voluntary. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As noted previously, the effect of the final rule would be neutral or relieve regulatory burden.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule would maintain the existing structure of the PSD and title V programs and would not, therefore, affect the relationship between the national government and the states or the distribution of power and responsibilities among the various levels of government. In addition, the final rule would not change the existing GHG permitting thresholds, and therefore would not impose any additional burden on state permitting authorities to issue PSD or title V permits or such permits. The provisions for GHG PALs will have the effect of reducing permitting burden in that the burden associated with issuing a PAL permit would be more than offset through avoiding subsequent PSD permitting actions with greater associated burden. Thus, Executive Order 13132 does not apply to this rule.

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). There are no tribal authorities currently issuing major NSR permits, one tribe is implementing a title V program based on a delegation agreement under 40 CFR part 71 and one tribe has recently obtained approval of title V program under 40 CFR part 70. However, the final rule would not change the existing GHG permitting thresholds, and therefore will not impose any additional burden on sources to obtain PSD or title V permits or on permitting authorities to issue such permits. The provisions for GHG PALs will have the effect of reducing permitting burden in that the burden associated with obtaining or issuing a PAL permit would be more than offset through avoiding subsequent PSD permitting actions with greater associated burden. Thus, Executive Order 13175 does not apply to this action.

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

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

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

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

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

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

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The final rule would not change the existing GHG permitting thresholds, and therefore would not affect the universe of sources subject to permitting.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action is effective on August 13, 2012.

L. Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by September 10, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not

postpone the effectiveness of such rule or action. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

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

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (1) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (2) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

This rule is ''nationally applicable'' within the meaning of section 307(b)(1). This rule promulgates PSD regulations that are applicable in every state in which the EPA is the PSD permitting authority, and takes final action that is relevant for EPA-approved SIP PSD programs in the rest of the states, as well as EPA-approved title V programs in all states. For the same reasons, the Administrator also is determining that this action is of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because, in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of ''nationwide scope or effect'' would be appropriate for any action that has a scope or effect beyond a single judicial circuit. H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this rulemaking extends to all judicial circuits because PSD and/or title V programs in all areas across the country are affected by today's final action. In these circumstances, section 307(b)(1) and its legislative history call for the Administrator to find the rule to be of ''nationwide scope or effect'' and for venue to be in the D.C. Circuit.

Thus, any petitions for review of this rule must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

IX. Statutory Authority

The statutory authority for this action is provided by sections 101, 114, 165, 169, 301, 501 and 502 of the CAA as amended (42 U.S.C. 7401, 7414, 7475, 7579, 7601, 7661 and 7661a).

List of Subjects in 40 CFR Part 52

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

Dated: June 29, 2012.

Lisa P. Jackson,

Administrator.

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

PART 52—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 52.21 is amended by:
■ a. Revising paragraph (b)(49)(i);
■ b. Revising paragraph (aa)(1)(i);
■ c. Revising paragraph (aa)(1)(ii) introductory text;
■ d. Revising paragraphs (aa)(1)(ii)(*b*) and (*c*);
■ e. Adding paragraph (aa)(1)(ii)(*d*);
■ f. Revising paragraph (aa)(1)(iii);
■ g. Revising paragraphs (aa)(2)(i) and (iii);
■ h. Adding paragraph (aa)(2)(iv)(*c*);
■ i. Revising paragraphs (aa)(2)(v), (viii), (ix), (x) and (xi);
■ j. Adding paragraphs (aa)(2)(xii), (xiii), (xiv) and (xv);
■ k. Revising paragraph (aa)(3) introductory text;
■ l. Adding paragraph (aa)(3)(iv);
■ m. Revising paragraph (aa)(4)(i) introductory text;
■ n. Revising paragraphs (aa)(4)(i)(*a*), (*d*) and (*g*);
■ o. Revising paragraph (aa)(5);
■ p. Revising the first sentence of paragraph (aa)(6)(i);
■ q. Adding paragraph (aa)(6)(iii);
■ r. Revising paragraph (aa)(7) introductory text;
■ s. Revising paragraphs (aa)(7)(i), (iii), (v), (vi) and (vii);
■ t. Adding paragraph (aa)(7)(xi);
■ u. Revising paragraph (aa)(8)(ii)(*b*)(*2*);
■ v. Revising paragraph (aa)(9)(i)(*a*);
■ w. Revising paragraphs (aa)(9)(iv) and (v);
■ x. Revising paragraphs (aa)(10)(i) and (ii);
■ y. Revising paragraphs (aa)(10)(iv)(*c*)(*1*) and (*2*);
■ z. Revising paragraph (aa)(11)(i) introductory text;
■ aa. Revising paragraphs (aa)(11)(i)(*a*) and (*b*);
■ bb. Revising paragraph (aa)(12)(i)(*a*);
■ cc. Revising paragraphs (aa)(14)(i)(*b*) and (*d*); and
■ dd. Revising paragraph (aa)(14)(ii) introductory text.

The revisions and additions read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(49) * * *

(i) *Greenhouse gases (GHGs),* the air pollutant defined in § 86.1818–12(a) of this chapter as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs (b)(49)(iv) through (v) of this section and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements in paragraphs (aa)(1) through (15) of this section, and complies with the PAL permit containing the GHG PAL.

* * * * *

(aa) * * *

(1) * * *

(i) The Administrator may approve the use of an actuals PAL, including for GHGs on either a mass basis or a CO_2e basis, for any existing major stationary source or any existing GHG-only source if the PAL meets the requirements in paragraphs (aa)(1) through (15) of this section. The term ''PAL'' shall mean ''actuals PAL'' throughout paragraph (aa) of this section.

(ii) Any physical change in or change in the method of operation of a major stationary source or a GHG-only source that maintains its total source-wide emissions below the PAL level, meets

the requirements in paragraphs (aa)(1) through (15) of this section, and complies with the PAL permit:

* * * * *

(*b*) Does not have to be approved through the PSD program;

(*c*) Is not subject to the provisions in paragraph (r)(4) of this section (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program); and

(*d*) Does not make GHGs subject to regulation as defined by paragraph (b)(49) of this section.

(iii) Except as provided under paragraph (aa)(1)(ii)(*c*) of this section, a major stationary source or a GHG-only source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) * * *

(i) *Actuals PAL* for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph (b)(48) of this section) of all emissions units (as defined in paragraph (b)(7) of this section) at the source, that emit or have the potential to emit the PAL pollutant. For a GHG-only source, *actuals PAL* means a PAL based on the baseline actual emissions (as defined in paragraph (aa)(2)(xiii) of this section) of all emissions units (as defined in paragraph (aa)(2)(xiv) of this section) at the source, that emit or have the potential to emit GHGs.

* * * * *

(iii) *Small emissions unit* means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph (b)(23) of this section or in the Act, whichever is lower. For a GHG PAL issued on a CO_2e basis, *small emissions unit* means an emissions unit that emits or has the potential to emit less than the amount of GHGs on a CO_2e basis defined as ''significant'' for the purposes of paragraph (b)(49)(iii) of this section at the time the PAL permit is being issued.

(iv) * * *

(*c*) For a GHG PAL issued on a CO_2e basis, any emissions unit that emits or has the potential to emit equal to or greater than the amount of GHGs on a CO_2e basis that would be sufficient for a new source to trigger permitting requirements under paragraph (b)(49) of this section at the time the PAL permit is being issued.

(v) *Plantwide applicability limitation (PAL)* means an emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e for a CO_2e-based GHG emission limitation, for a pollutant at a major stationary source or GHG-only source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs (aa)(1) through (15) of this section.

* * * * *

(viii) *PAL major modification* means, notwithstanding paragraphs (b)(2), (b)(3), and (b)(49) of this section (the definitions for major modification, net emissions increase, and subject to regulation), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(ix) *PAL permit* means the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the State Implementation Plan, or the title V permit issued by the Administrator that establishes a PAL for a major stationary source or a GHG-only source.

(x) *PAL pollutant* means the pollutant for which a PAL is established at a major stationary source or a GHG-only source. For a GHG-only source, the only available PAL pollutant is greenhouse gases.

(xi) *Significant emissions unit* means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph (b)(23) of this section or in the Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (aa)(2)(iv) of this section. For a GHG PAL issued on a CO_2e basis, *significant emissions unit* means any emissions unit that emits or has the potential to emit GHGs on a CO_2e basis in amounts equal to or greater than the amount that would qualify the unit as small emissions unit as defined in paragraph (aa)(2)(iii) of this section, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (aa)(2)(iv)(*c*) of this section.

(xii) *GHG-only source* means any existing stationary source that emits or has the potential to emit GHGs in the amount equal to or greater than the amount of GHGs on a mass basis that would be sufficient for a new source to trigger permitting requirements for GHGs under paragraph (b)(1) of this section and the amount of GHGs on a CO_2e basis that would be sufficient for a new source to trigger permitting requirements for GHGs under paragraph (b)(49) of this section at the time the PAL permit is being issued, but does not emit or have the potential to emit any other non-GHG regulated NSR pollutant at or above the applicable major source threshold. A GHG-only source may only obtain a PAL for GHG emissions under paragraph (aa) of this section.

(xiii) *Baseline actual emissions* for a GHG PAL means the average rate, in tons per year CO_2e or tons per year GHG, as applicable, at which the emissions unit actually emitted GHGs during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Administrator for a permit required under this section or by the permitting authority for a permit required by a plan, whichever is earlier. For any existing electric utility steam generating unit, *baseline actual emissions* for a GHG PAL means the average rate, in tons per year CO_2e or tons per year GHG, as applicable, at which the emissions unit actually emitted the GHGs during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding either the date the owner or operator begins actual construction of the project, except that the Administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(*a*) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(*b*) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(*c*) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the stationary source must currently comply, had such stationary source been required to comply with such limitations during the consecutive 24-month period.

(*d*) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual GHG emissions and for adjusting this amount if required by paragraphs (aa)(2)(xiii)(*b*) and (*c*) of this section.

(xiv) *Emissions unit* with respect to GHGs means any part of a stationary source that emits or has the potential to emit GHGs. For purposes of this section, there are two types of emissions units as described in the following:

(*a*) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(*b*) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (aa)(2)(xiv)(*a*) of this section.

(xv) *Minor source* means any stationary source that does not meet the definition of major stationary source in paragraph (b)(1) of this section for any pollutant at the time the PAL is issued.

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

* * * * *

(iv) As part of a permit application requesting a GHG PAL, the owner or operator of a major stationary source or a GHG-only source shall submit a statement by the source owner or operator that clarifies whether the source is an existing major source as defined in paragraph (b)(1)(i)(*a*) and (*b*) of this section or a GHG-only source as defined in paragraph (aa)(2)(xii) of this section.

(4) *General requirements for establishing PALs.* (i) The Administrator is allowed to establish a PAL at a major stationary source or a GHG-only source, provided that at a minimum, the requirements in paragraphs (aa)(4)(i)(*a*) through (*g*) of this section are met.

(*a*) The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e, that is enforceable as a practical matter, for the entire major stationary source or GHG-only source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source or GHG-only source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source or GHG-only source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

* * * * *

(*d*) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source or GHG-only source.

* * * * *

(*g*) The owner or operator of the major stationary source or GHG-only source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (aa)(12) through (14) of this section for each emissions unit under the PAL through the PAL effective period.

* * * * *

(5) *Public participation requirements for PALs.* PALs for existing major stationary sources or GHG-only sources shall be established, renewed, or increased through a procedure that is consistent with §§ 51.160 and 51.161 of this chapter. This includes the requirement that the Administrator provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Administrator must address all material comments before taking final action on the permit.

(6) * * *

(i) Except as provided in paragraph (aa)(6)(ii) and (iii) of this section, the plan shall provide that the actuals PAL level for a major stationary source or a GHG-only source shall be established as the sum of the baseline actual emissions (as defined in paragraph (b)(48) of this section or, for GHGs, paragraph (aa)(2)(xiii) of this section) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (b)(23) of this section or under the Act, whichever is lower. * * *

* * * * *

(iii) For CO_2e based GHG PAL, the actuals PAL level shall be established as the sum of the GHGs baseline actual emissions (as defined in paragraph (aa)(2)(xiii) of this section) of GHGs for each emissions unit at the source, plus an amount equal to the amount defined as ''significant'' on a CO_2e basis for the purposes of paragraph (b)(49)(iii) at the time the PAL permit is being issued. When establishing the actuals PAL level for a CO_2e-based PAL, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The reviewing authority shall specify a reduced PAL level (in tons per year CO_2e) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or state regulatory requirement(s) that the reviewing authority is aware of prior to issuance of the PAL permit.

(7) *Contents of the PAL permit.* The PAL permit must contain, at a minimum, the information in paragraphs (aa)(7)(i) through (xi) of this section.

(i) The PAL pollutant and the applicable source-wide emission limitation in tons per year or tons per year CO_2e.

* * * * *

(iii) Specification in the PAL permit that if a major stationary source or a GHG-only source owner or operator applies to renew a PAL in accordance with paragraph (aa)(10) of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by a reviewing authority.

* * * * *

(v) A requirement that, once the PAL expires, the major stationary source or GHG-only source is subject to the requirements of paragraph (aa)(9) of this section.

(vi) The calculation procedures that the major stationary source or GHG-only source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by paragraph (aa)(13)(i) of this section.

(vii) A requirement that the major stationary source or GHG-only source owner or operator monitor all emissions units in accordance with the provisions under paragraph (aa)(12) of this section.

* * * * *

(xi) A permit for a GHG PAL issued to a GHG-only source shall also include a statement denoting that GHG emissions at the source will not be subject to regulation under paragraph (b)(49) of this section as long as the source complies with the PAL.

(8) * * *

(ii) * * *

(*b*) * * *

(*2*) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source or GHG-only source under the State Implementation Plan; and

(9) * * *

(i) * * *

(*a*) Within the time frame specified for PAL renewals in paragraph (aa)(10)(ii) of this section, the major stationary source or GHG-only source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Administrator) by distributing the PAL allowable emissions for the major stationary source or GHG-only source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph (aa)(10)(v) of this section, such distribution shall be made as if the PAL had been adjusted.

* * * * *

(iv) Any physical change or change in the method of operation at the major stationary source or GHG-only source will be subject to major NSR requirements if such change meets the definition of major modification in paragraph (b)(2) of this section.

(v) The major stationary source or GHG-only source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph (r)(4) of this section, but were eliminated by the PAL in accordance with the provisions in paragraph (aa)(1)(ii)(*c*) of this section.

(10) * * *

(i) The Administrator shall follow the procedures specified in paragraph (aa)(5) of this section in approving any request to renew a PAL for a major stationary source or a GHG-only source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Administrator.

(ii) *Application deadline.* A major stationary source or GHG-only source owner or operator shall submit a timely application to the Administrator to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source or GHG-only source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

* * * * *

(iv) * * *

(*c*) * * *

(*1*) If the potential to emit of the major stationary source or GHG-only source is less than the PAL, the Administrator shall adjust the PAL to a level no greater than the potential to emit of the source; and

(*2*) The Administrator shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source or GHG-only source has complied with the provisions of paragraph (aa)(11) of this section (increasing a PAL).

* * * * *

(11) * * *

(i) The Administrator may increase a PAL emission limitation only if the major stationary source or GHG-only source complies with the provisions in paragraphs (aa)(11)(i)(*a)* through (*d*) of this section.

(*a*) The owner or operator of the major stationary source or GHG-only source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary or GHG-only source's emissions to equal or exceed its PAL.

(*b*) As part of this application, the major stationary source or GHG-only source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

* * * * *

(12) * * *

(i) * * *

(*a*) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time or CO_2e per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

* * * * *

(14) * * *

(i) * * *

(*b*) Total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO_2e) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (aa)(13)(i) of this section.

* * * * *

(*d*) A list of any emissions units modified or added to the major stationary source or GHG-only source during the preceding 6-month period.

* * * * *

(ii) *Deviation report.* The major stationary source or GHG-only source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to § 70.6(a)(3)(iii)(B) of this chapter shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing § 70.6(a)(3)(iii)(B) of this chapter. The reports shall contain the following information:

* * * * *

[FR Doc. 2012–16704 Filed 7–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R09–OAR–2012–0286; FRL–9698–7]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; Gila River Indian Community

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.