

additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *E. Executive Order 13132, Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

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, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

#### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (59 FR 22951, November 9, 2000), because the SIP EPA is proposing to disapprove would not apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

#### *G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and

subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

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

This proposed rule 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, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

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

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

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP

under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: November 10, 2010.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 2010-29146 Filed 11-17-10; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[EPA-R07-OAR-2010-0932, FRL-9228-5]

### **Approval and Promulgation of Implementation Plans; Kansas: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a draft revision to the State Implementation Plan (SIP), submitted by the Kansas Department of Health and Environment (KDHE) on October 4, 2010 for parallel processing. The proposed SIP revision (Kansas Administrative Regulation 28-29-350) to Kansas's Prevention of Significant Deterioration (PSD) program provides the state of Kansas with authority to regulate GHG emissions under the PSD program. The proposed SIP revision also establishes appropriate emission thresholds and time-frames for which stationary sources and modification projects become subject to Kansas's PSD permitting requirements for their GHG emissions, in accordance with the provisions of the "PSD and Title V Greenhouse Gas Tailoring Final Rule" published June 3, 2010, in the **Federal Register** at 75 FR 31514. EPA is proposing approval through a parallel processing action.

**DATES:** Comments must be received on or before December 20, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2010-0932, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail*: [gonzalez.larry@epa.gov](mailto:gonzalez.larry@epa.gov).

3. *Fax*: (913) 551-7844.

4. *Mail*: Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

5. *Hand Delivery or Courier*: Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R07-OAR-2010-0932. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information

about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Kansas SIP, contact Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Mr. Gonzalez's telephone number is (913) 551-7041; *e-mail address*: [gonzalez.larry@epa.gov](mailto:gonzalez.larry@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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#### **I. What action is EPA proposing in today's notice?**

On October 4, 2010, KDHE submitted draft revisions to Kansas Administrative Regulations to EPA for approval into the state of Kansas's SIP to (1) provide the state with the authority to regulate GHGs under its PSD program; and (2) establish appropriate emission thresholds and time-frames for determining which new or modified stationary sources become subject to Kansas's PSD permitting requirements for GHG emissions. These thresholds and time-frames are consistent with the

"PSD and Title V Greenhouse Gas Tailoring Final Rule" (75 FR 31514) hereafter referred to as the "Tailoring Rule." Final approval of Kansas's October 4, 2010, SIP revision will make Kansas's SIP adequate with respect to PSD requirements for GHG-emitting sources. Furthermore, final approval of Kansas's October 4, 2010, SIP revision will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements when these requirements begin applying to GHGs on January 2, 2011. Pursuant to section 110 of the CAA, EPA is proposing to approve this revision into the Kansas SIP.

Due to the fact that this proposed rule revision is not yet state-effective, Kansas requested that EPA "parallel process" the revision. Under this procedure, the EPA Regional Office works closely with the state while developing new or revised regulations. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA publishes this notice of proposed rulemaking in the **Federal Register** and solicits public comment in approximately the same time frame during which the state is holding its public hearing. The state and EPA thus provide for public comment periods on both the state and the Federal actions in parallel.

After Kansas submits the formal state-effective rule and SIP revision request (including a response to all public comments raised during the state's public participation process), EPA will prepare a final rulemaking notice for the SIP revision. If changes are made to the state's proposed rule after EPA's notice of proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking action. If the changes are significant, then EPA may be obliged to re-propose the action. In addition, if the changes render the SIP revision not approvable, EPA's re-proposal of the action would be a disapproval of the revision.

#### **II. What is the background for the action proposed by EPA in today's notice?**

Today's proposed action on the Kansas SIP relates to three Federal rulemaking actions. The first rulemaking is EPA's "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule," Final Rule, (the Tailoring Rule). 75 FR 31514

(June 3, 2010). The second rulemaking is EPA's "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," Proposed Rule, (GHG SIP Call), 75 FR 53892 (September 2, 2010). The third rulemaking is EPA's "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan," Proposed Rule, 75 FR 53883 (September 2, 2010) (GHG FIP), which serves as a companion rulemaking to EPA's proposed GHG SIP Call. A summary of each of these rulemakings is described below.

In the first rulemaking, the Tailoring Rule, EPA establishes appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. In the second rulemaking, the GHG SIP Call (which is not yet final), EPA proposed to find that the EPA-approved PSD programs in 13 states (including Kansas) are substantially inadequate to meet CAA requirements because they do not appear to apply PSD requirements to GHG-emitting sources. For each of these states, EPA proposes to require the state (through a "SIP Call") to revise its SIP as necessary to correct such inadequacies. EPA is proposing an expedited schedule for these states to submit their SIP revision, in light of the fact that as of January 2, 2011, certain GHG-emitting sources will become subject to the PSD requirements and may not be able to obtain a PSD permit in order to construct or modify. In the third rulemaking, the proposed GHG FIP, EPA is proposing a FIP to apply in any state that is unable to submit, by its deadline, a SIP revision to ensure that the state has authority to issue PSD permits for GHG-emitting sources. Kansas is now seeking to revise its SIP to make it adequate with respect to PSD requirements for GHG-emitting sources. Furthermore, Kansas is seeking to revise its SIP to put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, thereby ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements when these requirements begin applying to GHGs on January 2, 2011.

Below is a brief overview of GHGs and GHG-emitting sources, the CAA PSD program, minimum SIP elements for a PSD program, and EPA's recent actions regarding GHG permitting. Following this section, EPA discusses, in sections III and IV, the relationship

between the proposed Kansas SIP revision and EPA's other national rulemakings as well as EPA's analysis of Kansas's SIP revision.

#### A. What are GHGs and their sources?

A detailed explanation of GHGs, climate change and the impact on health, society, and the environment is included in EPA's technical support document for EPA's GHG endangerment finding final rule (Document ID No. EPA-HQ-OAR-2009-0472-11292 at <http://www.regulations.gov>). The endangerment finding rulemaking is discussed later in this rulemaking. A summary of the nature and sources of GHGs is provided below.

GHGs trap the Earth's heat that would otherwise escape from the atmosphere into space and form the greenhouse effect that helps keep the Earth warm enough for life. GHGs are naturally present in the atmosphere and are also emitted by human activities. Human activities are intensifying the naturally occurring greenhouse effect by increasing the amount of GHGs in the atmosphere, which is changing the climate in a way that endangers human health, society, and the natural environment.

Some GHGs, such as carbon dioxide (CO<sub>2</sub>), are emitted to the atmosphere through natural processes as well as human activities. Other gases, such as fluorinated gases, are created and emitted solely through human activities. The well-mixed GHGs of concern directly emitted by human activities include CO<sub>2</sub>, methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>), hereafter referred to collectively as "the six well-mixed GHGs," or, simply, GHGs. Together these six well-mixed GHGs constitute the "air pollutant" upon which the GHG thresholds in EPA's Tailoring Rule are based. These six gases remain in the atmosphere for decades to centuries where they become well-mixed globally in the atmosphere. When they are emitted more quickly than natural processes can remove them from the atmosphere, their concentrations increase, thus increasing the greenhouse effect.

In the U.S., the combustion of fossil fuels (e.g., coal, oil, gas) is the largest source of CO<sub>2</sub> emissions and accounts for 80 percent of the total GHG emissions by mass. Anthropogenic CO<sub>2</sub> emissions released from a variety of sources, including through the use of fossil fuel combustion and cement production from geologically stored carbon (e.g., coal, oil, and natural gas) that is hundreds of millions of years old,

as well as anthropogenic CO<sub>2</sub> emissions from land-use changes such as deforestation, perturb the atmospheric concentration of CO<sub>2</sub>, and the distribution of carbon within different reservoirs readjusts. More than half of the energy-related emissions come from large stationary sources such as power plants, while about a third come from transportation. Of the six well-mixed GHGs, four (CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, and HFCs) are emitted by motor vehicles. In the U.S., industrial processes (such as the production of cement, steel, and aluminum), agriculture, forestry, other land use, and waste management are also important sources of GHGs.

Different GHGs have different heat-trapping capacities. The concept of Global Warming Potential (GWP) was developed to compare the heat-trapping capacity and atmospheric lifetime of one GHG to another. The definition of a GWP for a particular GHG is the ratio of heat trapped by one unit mass of the GHG to that of one unit mass of CO<sub>2</sub> over a specified time period. When quantities of the different GHGs are multiplied by their GWPs, the different GHGs can be summed and compared on a carbon dioxide equivalent (CO<sub>2</sub>e) basis. For example, CH<sub>4</sub> has a GWP of 21, meaning each ton of CH<sub>4</sub> emissions would have 21 times as much impact on global warming over a 100-year time horizon as 1 ton of CO<sub>2</sub> emissions. Thus, on the basis of heat-trapping capability, 1 ton of CH<sub>4</sub> would equal 21 tons of CO<sub>2</sub>e. The GWPs of the non-CO<sub>2</sub> GHGs range from 21 (for CH<sub>4</sub>) up to 23,900 (for SF<sub>6</sub>). Aggregating all GHGs on a CO<sub>2</sub>e basis at the source level allows a facility to evaluate its total GHG emissions contribution based on a single metric.

#### B. What are the general requirements of the PSD program?

##### 1. Overview of the PSD Program

The PSD program is a preconstruction review and permitting program applicable to new major stationary sources and major modifications at existing stationary sources. The PSD program applies in areas that are designated "attainment" or "unclassifiable" for a national ambient air quality standard (NAAQS). The PSD program is contained in part C of title I of the CAA. The "nonattainment NSR" program applies in areas not in attainment of a NAAQS or in the Ozone Transport Region, and it is implemented under the requirements of part D of title I of the CAA. Collectively, EPA commonly refers to these two programs as the major NSR program. The governing EPA rules are generally contained in 40 CFR 51.165, 51.166,

52.21, 52.24, and part 51, Appendices S and W. There is no NAAQS for CO<sub>2</sub> or any of the other well-mixed GHGs, nor has EPA proposed any such NAAQS; therefore, unless and until EPA takes further such action, the nonattainment NSR program does not apply to GHGs.

The applicability of PSD to a particular source must be determined in advance of construction or modification and is pollutant-specific. The primary criterion in determining PSD applicability for a proposed new or modified source is whether the source is a “major emitting facility,” based on its predicted potential emissions of regulated pollutants within the meaning of CAA section 169(1), that either constructs or undertakes a modification. EPA has implemented these requirements in its regulations, which use somewhat different terminology than the CAA does, for determining PSD applicability.

#### a. Major Stationary Source

Under PSD, a “major stationary source” is any source belonging to a specified list of 28 source categories that emits or has the potential to emit 100 tpy or more of any air pollutant subject to regulation under the CAA, or any other source type that emits or has the potential to emit such pollutants in amounts equal to or greater than 250 tpy. We refer to these levels as the 100/250-tpy thresholds. A new source with a potential to emit (PTE) at or above the applicable “major stationary source threshold” is subject to major NSR. These limits originate from section 169 of the CAA, which applies PSD to any “major emitting facility” and defines the term to include any source that emits or has a PTE of 100 or 250 tpy, depending on the source category. Note that the major source definition incorporates the phrase “subject to regulation,” which, as described later, will begin to include GHGs on January 2, 2011, under our interpretation of that phrase as discussed in the recent memorandum entitled, “Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.” 75 FR 17004 (April 2, 2010).

#### b. Major Modifications

PSD also applies to existing sources that undertake a “major modification,” which occurs when: (1) There is a physical change in, or change in the method of operation of, a “major stationary source;” (2) the change results in a “significant” emissions increase of a pollutant subject to regulation (equal to or above the significance level that EPA has set for the pollutant in 40 CFR

52.21(b)(23)); and (3) there is a “significant net emissions increase” of a pollutant subject to regulation that is equal to or above the significance level (defined in 40 CFR 52.21(b)(23)). Significance levels, which EPA has promulgated for criteria pollutants and certain other pollutants, represent a *de minimis* contribution to air quality problems. When EPA has not set a significance level for a regulated NSR pollutant, PSD applies to an increase of the pollutant in any amount (that is, in effect, the significance level is treated as zero).

#### 2. General Requirements for PSD

This section provides a very brief summary of the main requirements of the PSD program. One principal requirement is that a new major source or major modification must apply best available control technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost effectiveness of the control and energy and environmental impacts. EPA has developed a “top-down” approach for BACT review, which involves a decision process that includes identification of all available control technologies, elimination of technically infeasible options, ranking of remaining options by control and cost effectiveness, and then selection of BACT. Under PSD, once a source is determined to be major for any regulated NSR pollutant, a BACT review is performed for each attainment pollutant that exceeds its PSD significance level as part of new construction or for modification projects at the source, where there is a significant increase and a significant net emissions increase of such pollutant.<sup>1</sup>

In addition to performing BACT, the source must analyze impacts on ambient air quality to assure that sources do not cause or contribute to violation of any NAAQS or PSD increments and must analyze impacts on soil, vegetation, and visibility. In addition, sources or modifications that would impact Class I areas (e.g., national parks) may be subject to additional requirements to protect air quality related values (AQRVs) that have been identified for such areas. Under PSD, if a source’s proposed project may impact a Class I area, the Federal Land Manager is notified and is responsible for

<sup>1</sup> EPA notes that the PSD program has historically operated in this fashion for all pollutants—when new sources or modifications are “major,” PSD applies to all pollutants that are emitted in significant quantities from the source or project. This rule does not alter that for sources or modifications that are major due to their GHG emissions.

evaluating a source’s projected impact on the AQRVs and recommending either approval or disapproval of the source’s permit application based on anticipated impacts. There are currently no NAAQS or PSD increments established for GHGs, and therefore these PSD requirements would not apply for GHGs, even when PSD is triggered for GHGs. However, if PSD is triggered for a GHG-emitting source, all regulated NSR pollutants that the new source emits in significant amounts would be subject to PSD requirements. Therefore, if a facility triggers NSR for non-GHG pollutants for which there are established NAAQS or increments, the air quality, additional impacts, and Class I requirements would apply to those pollutants.

Pursuant to existing PSD requirements, the permitting authority must provide notice of its preliminary decision on a source’s application for a PSD permit and must provide an opportunity for comment by the public, industry, and other interested persons. After considering and responding to comments, the permitting authority must issue a final determination on the construction permit. Usually NSR permits are issued by a state or local air pollution control agency that has its own authority to issue PSD permits under a permit program that has been approved by EPA for inclusion in its SIP. In some areas, EPA has delegated its authority to issue PSD permits under federal regulations to the state or local agency. In other areas, EPA issues the permits under its own authority.

#### C. What are the CAA requirements to include the PSD program in the SIP?

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

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

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

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

CAA section 161 provides that—

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

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

A number of states do not have PSD programs approved into their SIPs. In those states, EPA’s regulations at 40 CFR 52.21 govern, and either EPA or the state as EPA’s delegatee acts as the permitting authority. On the other hand, most states have PSD programs that have been approved into their SIPs, and these states implement their PSD programs and act as the permitting authority. Kansas has a SIP-approved PSD program.

#### *D. What actions has EPA taken concerning PSD requirements for GHG-emitting sources?*

##### 1. What are the Endangerment Finding, the Light Duty Vehicle Rule, and the Johnson Memo Reconsideration?

By notice dated December 15, 2009, pursuant to CAA section 202(a), EPA issued, in a single final action, two findings regarding GHGs that are commonly referred to as the “Endangerment Finding” and the “Cause or Contribute Finding.” “Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act,” 74 FR 66496. In the Endangerment Finding, the Administrator found that six long-lived and directly emitted GHGs—CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs, and SF<sub>6</sub>—may reasonably be anticipated to endanger public health and welfare. In the Cause or Contribute Finding, the

Administrator “define[d] the air pollutant as the aggregate group of the same six \* \* \* greenhouse gases,” 74 FR 66536, and found that the combined emissions of this air pollutant from new motor vehicles and new motor vehicle engines contribute to the GHG air pollution that endangers public health and welfare.

By notice dated May 7, 2010, EPA and the National Highway Traffic Safety Administration published what is commonly referred to as the “Light-Duty Vehicle Rule” (LDVR), which for the first time established Federal controls on GHGs emitted from light-duty vehicles. “Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.” 75 FR 25324. In its applicability provisions, the LDVR specifies that it “contains standards and other regulations applicable to the emissions of six greenhouse gases,” including CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs, and SF<sub>6</sub>. 75 FR 25686 (40 CFR 86.1818–12(a)). Shortly before finalizing the LDVR, by notice dated April 2, 2010, EPA published a notice commonly referred to as the Johnson Memo Reconsideration. On December 18, 2008, EPA issued a memorandum, “EPA’s Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program” (known as the “Johnson Memo” or the “PSD Interpretive Memo,” and referred to in this preamble as the “Interpretive Memo”), that set forth EPA’s interpretation regarding which EPA and state actions, with respect to a previously unregulated pollutant, cause that pollutant to become “subject to regulation” under the Act. Whether a pollutant is “subject to regulation” is important for the purposes of determining whether it is covered under the federal PSD permitting program. The Interpretive Memo established that a pollutant is “subject to regulation” only if it is subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant (referred to as the “actual control interpretation”). On February 17, 2009, EPA granted a petition for reconsideration on the Interpretive Memo and announced its intent to conduct a rulemaking to allow for public comment on the issues raised in the memorandum and on related issues. EPA also clarified that the Interpretive Memo would remain in effect pending reconsideration.

On March 29, 2010, EPA signed a notice conveying its decision to continue applying (with one limited

refinement) the Interpretive Memo’s interpretation of “subject to regulation” (“Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs”). 75 FR 17004. EPA concluded that the “actual control interpretation” is the most appropriate interpretation to apply given the policy implications. However, EPA refined the Agency’s interpretation in one respect: EPA established that PSD permitting requirements apply to a newly regulated pollutant at the time a regulatory requirement to control emissions of that pollutant “takes effect” (rather than upon promulgation or the legal effective date of the regulation containing such a requirement). In addition, based on the anticipated promulgation of the LDVR, EPA stated that the GHG requirements of the vehicle rule would take effect on January 2, 2011, because that is the earliest date that a 2012 model year vehicle may be introduced into commerce. In other words, the compliance obligation under the LDVR does not occur until a manufacturer may introduce into commerce vehicles that are required to comply with GHG standards, which will begin with model year 2012 and will not occur before January 2, 2011.

##### 2. What is EPA’s Tailoring Rule?

On June 3, 2010 (effective August 2, 2010), EPA promulgated a final rulemaking for the purpose of relieving overwhelming permitting burdens that would, in the absence of the rule, fall on permitting authorities and sources, *i.e.*, the Tailoring Rule. 75 FR 31514. EPA accomplished this by tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD program<sup>3</sup> of the CAA. In particular, EPA established in the Tailoring Rule a phase-in approach for PSD applicability and established the first two steps of the phase-in for the largest GHG-emitters. Additionally, EPA committed to certain follow-up actions regarding future steps beyond the first two, discussed in more detail later.<sup>4</sup>

<sup>3</sup> The Tailoring Rule also applies to the title V program, which requires operating permits for existing sources. However, today’s action does not affect Kansas’s title V program.

<sup>4</sup> EPA adopted the Tailoring Rule after careful consideration of numerous public comments. On October 27, 2009 (74 FR 55292), EPA proposed the Tailoring Rule. EPA held two public hearings on the proposed rule, and received over 400,000 written public comments. The public comment period ended on December 28, 2009. The comments provided detailed information that helped EPA understand better the issues and potential impacts of the Tailoring Rule. The preamble of EPA’s Tailoring Rule describes in detail the comments received and how some of these comments were

<sup>2</sup> In the Tailoring Rule, EPA noted that commenters argued, with some variations, that the PSD provisions applied only to NAAQS pollutants, and not GHG, and EPA responded that the PSD provisions apply to all pollutants subject to regulation, including GHG. See 75 FR 31560–62 (June 3, 2010). EPA is not re-opening that issue in this rulemaking, and does not solicit comment on it.

For the first step of the Tailoring Rule, which will begin on January 2, 2011, PSD requirements will apply to major stationary source GHG emissions only if the sources are subject to PSD anyway due to their emissions of non-GHG pollutants. Therefore, in the first step, EPA will not require sources or modifications to evaluate whether they are subject to PSD requirements solely on account of their GHG emissions. Specifically, for PSD, Step 1 requires that as of January 2, 2011, the applicable requirements of PSD, most notably, the BACT requirement, will apply to projects that increase net GHG emissions by at least 75,000 tpy CO<sub>2</sub>e, but only if the project also significantly increases emissions of at least one non-GHG pollutant.

The second step of the Tailoring Rule, beginning on July 1, 2011, will phase in additional large sources of GHG emissions. New sources that emit, or have the potential to emit, at least 100,000 tpy CO<sub>2</sub>e will become subject to the PSD requirements. In addition, sources that emit or have the potential to emit at least 100,000 tpy CO<sub>2</sub>e and that undertake a modification that increases net GHG emissions by at least 75,000 tpy CO<sub>2</sub>e will also be subject to PSD requirements. For both steps, EPA notes that if sources or modifications exceed these CO<sub>2</sub>e-adjusted GHG triggers, they are not covered by permitting requirements unless their GHG emissions also exceed the corresponding mass-based triggers in tpy.

EPA believes that the costs to the sources and the administrative burdens to the permitting authorities of PSD permitting will be manageable at the levels in these initial two steps and that it would be administratively infeasible to subject additional sources to PSD requirements at those times. However, EPA also intends to issue a supplemental notice of proposed rulemaking in 2011, in which the Agency will propose or solicit comment on a third step of the phase-in that would include more sources, beginning on July 1, 2013. In the Tailoring Rule, EPA established an enforceable commitment that the Agency will complete this rulemaking by July 1, 2012, which will allow for 1 year's notice before Step 3 would take effect.

In addition, EPA committed to explore streamlining techniques that may well make the permitting programs much more efficient to administer for GHG, and that therefore may allow their expansion to smaller sources. EPA

expects that the initial streamlining techniques will take several years to develop and implement.

In the Tailoring Rule, EPA also included a provision, that no source with emissions below 50,000 tpy CO<sub>2</sub>e, and no modification resulting in net GHG increases of less than 50,000 tpy CO<sub>2</sub>e, will be subject to PSD permitting before at least 6 years (*i.e.*, April 30, 2016). This is because EPA has concluded that at the present time the administrative burdens that would accompany permitting sources below this level would be so great that even with the streamlining actions that EPA may be able to develop and implement in the next several years, and even with the increases in permitting resources that EPA can reasonably expect the permitting authorities to acquire, it would be impossible to administer the permit programs for these sources until at least 2016.

As EPA explained in the Tailoring Rule, the threshold limitations are necessary because without them, PSD would apply to all stationary sources that emit or have the potential to emit more than 100 or 250 tons of GHG per year beginning on January 2, 2011. This is the date when EPA's recently promulgated LDVR takes effect, imposing control requirements for the first time on CO<sub>2</sub> and other GHGs. If this January 2, 2011, date were to pass without the Tailoring Rule being in effect, PSD requirements would apply to GHG emissions at the 100/250 tpy applicability levels provided under a literal reading of the CAA as of that date. From that point forward, a source owner proposing to construct any new major source that emits at or higher than the applicability levels (and which therefore may be referred to as a "major" source) or modify any existing major source in a way that would increase GHG emissions would need to obtain a permit under the PSD program that addresses these emissions before construction or modification could begin.

Under these circumstances, many small sources would be burdened by the costs of the individualized PSD control technology requirements and permit applications that the PSD provisions, absent streamlining, require. Additionally, state and local permitting authorities would be burdened by the extraordinary number of these permit applications, which are orders of magnitude greater than the current inventory of permits and would vastly exceed the current administrative resources of the permitting authorities. Permit gridlock would result since the permitting authorities would likely be

able to issue only a tiny fraction of the permits requested.

In the Tailoring Rule, EPA adopted regulatory language codifying the phase-in approach. As explained in that rulemaking, many state, local and tribal area programs will likely be able to immediately implement the approach without rule or statutory changes by, for example, interpreting the term "subject to regulation" that is part of the applicability provisions for PSD permitting. EPA has requested permitting authorities to confirm that they will follow this implementation approach for their programs, and if they cannot, then EPA has requested that they notify the Agency so that we can take appropriate follow-up action to narrow federal approval of their programs before GHGs become subject to PSD permitting on January 2, 2011.<sup>5</sup> On October 1, 2010, the state of Kansas provided a letter to EPA with the requested modification. See the docket for this proposed rulemaking for a copy of Kansas's letter.

The thresholds that EPA established are based on CO<sub>2</sub>e for the aggregate sum of six GHGs that constitute the pollutant that will be subject to regulation, which we refer to as GHG.<sup>6</sup> These gases are: CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs, and SF<sub>6</sub>. Thus, in EPA's Tailoring Rule, EPA provided that PSD applicability is based on the quantity that results when the mass emissions of each of these gases is multiplied by the GWP of that gas, and then summed for all six gases. However, EPA further provided that in order for a source's GHG emissions to trigger PSD requirements, the quantity of the GHG emissions must equal or exceed both the applicability thresholds established in the Tailoring Rule on a CO<sub>2</sub>e basis and the statutory thresholds of 100 or 250 tpy on a mass basis.<sup>7</sup> Similarly, in order

<sup>5</sup> Narrowing EPA's approval will ensure that for federal purposes, sources with GHG emissions that are less than the Tailoring Rule's emission thresholds will not be obligated under federal law to obtain PSD permits during the gap between when GHG PSD requirements go into effect on January 2, 2011 and when either (1) EPA approves a SIP revision adopting EPA's tailoring approach, or (2) if a state opts to regulate smaller GHG-emitting sources, the state demonstrates to EPA that it has adequate resources to handle permitting for such sources. EPA expects to finalize the narrowing action prior to the January 2, 2011 deadline with respect to those states for which EPA will not have approved the Tailoring Rule thresholds in their SIPs by that time.

<sup>6</sup> The term "greenhouse gases" is commonly used to refer generally to gases that have heat-trapping properties. However, in this notice, unless noted otherwise, we use it to refer specifically to the pollutant regulated in the LDVR.

<sup>7</sup> The relevant thresholds are 100 tpy for title V, and 250 tpy for PSD, except for 28 categories listed in EPA regulations for which the PSD threshold is 100 tpy.

for a source to be subject to the PSD modification requirements, the source's net GHG emissions increase must exceed the applicable significance level on a CO<sub>2</sub>e basis and must also result in a net mass increase of the constituent gases combined.

### 3. What is the GHG SIP Call?

By notice dated September 2, 2010, EPA proposed the GHG SIP Call. In that action, along with the companion GHG FIP proposed rulemaking published at the same time, EPA took steps to ensure that in the 13 states that do not appear to have authority to issue PSD permits to GHG-emitting sources at present, either the state or EPA will have the authority to issue such permits by January 2, 2011. EPA explained that although for most states, either the state or EPA is already authorized to issue PSD permits for GHG-emitting sources as of that date, our preliminary information shows that these 13 states have EPA-approved PSD programs that do not appear to include GHG-emitting sources and therefore do not appear to authorize these states to issue PSD permits to such sources. Therefore, EPA proposed to find that these 13 states' SIPs are substantially inadequate to comply with CAA requirements and, accordingly, proposed to issue a SIP Call to require a SIP revision that applies their SIP PSD programs to GHG-emitting sources. In the companion GHG FIP rulemaking, EPA proposed a FIP that would give EPA authority to apply EPA's PSD program to GHG-emitting sources in any state that is unable to submit a corrective SIP revision by its deadline. Kansas was one of the states for which EPA proposed a SIP Call. The state's comments regarding the proposed SIP call, submitted October 1, 2010, are included in the docket for this rulemaking.

### III. What is the relationship between today's proposed action and EPA's proposed GHG SIP Call and GHG FIP?

As noted above, by notice dated September 2, 2010, EPA proposed the GHG SIP Call. At the same time, EPA proposed a FIP to apply in any state that is unable to submit, by its deadline, a SIP revision to ensure that the state has authority to issue PSD permits to GHG-emitting sources.<sup>8</sup> As discussed in

<sup>8</sup> As explained in the proposed GHG SIP Call (75 FR 53892, 53896), EPA intends to finalize its finding of substantial inadequacy and the SIP call for the 13 listed states by December 1, 2010. EPA requested that the states for which EPA is proposing a SIP call identify the deadline—between 3 weeks and 12 months from the date of signature of the final SIP Call—that they would accept for submitting their corrective SIP revision. In its October 1, 2010 letter, Kansas requested the earliest

section IV of this proposed rulemaking, Kansas does not interpret its current PSD regulations as providing it with the authority to regulate GHG, and as such, Kansas is included on the list of areas for the proposed SIP call. Kansas's October 4, 2010, proposed SIP revision (the subject of this rulemaking) addresses this authority. EPA will not take final action on the GHG SIP Call for the state of Kansas if the state submits its final SIP revision to EPA prior to the final rulemaking for the GHG SIP Call.

### IV. What is EPA's analysis of Kansas's proposed SIP revision?

On October 4, 2010, KDHE provided a revision to Kansas's SIP to EPA for parallel processing and eventual approval. This revision to Kansas's SIP is necessary because without it, (1) the state of Kansas would not have authority to issue PSD permits to GHG-emitting sources, and as a result, absent further action, those sources may not be able to construct or undertake modifications beginning January 2, 2011; and (2) assuming that the state of Kansas attains authority to issue PSD permits to GHG-emitting sources, PSD requirements would apply, as of January 2, 2011, at the 100- or 250-tpy levels provided under the CAA. This would greatly increase the number of required permits, imposing undue costs on small sources; which would overwhelm Kansas's permitting resources and severely impair the function of the program.

The state of Kansas's September 26, 2010, proposed SIP revision: (1) Provides the state of Kansas with the authority to regulate GHG under the PSD program of the CAA, and (2) establishes thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD program. Specifically, Kansas's October 4, 2010, proposed SIP revision includes changes to Kansas Air Regulations (KAR) 28–19–350—*Prevention of significant deterioration of air quality*. These revisions update Kansas's air regulations by providing the state the authority to regulate GHGs and aligning the thresholds for GHG permitting applicability with those specified in the Tailoring Rule.

The state of Kansas is currently a SIP-approved state for the PSD program. However, Kansas does not interpret its current rules, which are generally consistent with the Federal rules, to be applicable to GHGs. In the letter dated

possible deadline, either December 22, 2010, or three weeks after signature of the final SIP Call.

October 1, 2010, referenced above, Kansas notified EPA that the state does not currently have the authority to regulate GHG and thus is in the process of revising its regulation (the subject of this proposed action) to provide this authority. To provide this authority, Kansas is updating the definitions for “major source” and “subject to regulation” to explicitly include GHG as a regulated NSR pollutant under the CAA. Specifically, the Kansas proposed rule would incorporate by reference 40 CFR 52.21 as of July 1, 2007, and as amended by the Tailoring Rule promulgated on June 3, 2010. EPA has preliminarily determined that this change to Kansas's regulation is consistent with the CAA and its implementing regulations regarding GHG.<sup>9</sup>

The changes included in this submittal are substantively the same as EPA's Tailoring Rule. The Kansas rules have been formatted to conform to Kansas's rule drafting standards, but in substantive content the rules that address the Tailoring Rule provisions are the same as the federal rules. As part of its review of the Kansas submittal, EPA performed a line-by-line review of Kansas's proposed changes to its regulations and has preliminarily determined that they are consistent with the Tailoring Rule. These changes to Kansas's regulations are also consistent with section 110 of the CAA because they are incorporating GHGs for regulation in the Kansas SIP.

### V. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve the state of Kansas's revisions to the Kansas Administrative Regulations that were submitted to EPA on October 4, 2010, relating to PSD requirements for GHG-emitting sources. Specifically, Kansas's October 4, 2010, proposed submission: (1) Provides the state of Kansas with the authority to regulate GHGs under its PSD program, and (2) establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the preliminary determination that this SIP revision is

<sup>9</sup> Kansas's submittal incorporates by reference 40 CFR 52.21 as of July 1, 2007, as amended by the Tailoring Rule. In today's proposed rulemaking, EPA is not taking action on any of Kansas's changes to their PSD regulations regarding the “Ethanol Rule” (72 FR 24060, May 1, 2007). Kansas submitted its Ethanol Rule revision in 2009, and EPA intends to act on that revision in a separate rulemaking. Kansas has not adopted EPA's “Fugitive Emissions Rule” (73 FR 77882, December 19, 2008), so this proposal also does not address the Fugitive Emissions Rule.

approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

As noted above, at Kansas's request, EPA is "parallel processing" this proposed rule revision. After Kansas submits the formal state-effective rule revisions (including a response to all public comments raised during the state's public participation process), EPA will prepare a final rulemaking notice for the SIP revision. If changes are made to the state's proposed rule after EPA's notice of proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking action. If the changes are significant, then EPA may be obliged to re-propose the action. In addition, if these changes render the SIP revision not approvable, EPA's re-proposal of the action would be a disapproval of the revision.

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the state's law as meeting federal requirements and does not impose additional requirements beyond those imposed by the state's law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state of Kansas, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

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

Dated: November 9, 2010.

**Karl Brooks,**

*Regional Administrator, Region 7.*

[FR Doc. 2010-29144 Filed 11-17-10; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 136, 260, 423, 430, and 435

[EPA-HQ-OW-2010-0192; FRL-9228-6]

#### Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Analysis and Sampling Procedures; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; extension of the public comment period.

**SUMMARY:** On September 23, 2010, EPA proposed changes to analysis and sampling test procedures in wastewater regulations. These changes will help provide additional flexibility to the regulated community and laboratories in their selection of analytical methods (test procedures) for use in Clean Water Act programs. EPA requested that public comments on the proposal be

submitted on or before November 22, 2010 (a 60-day comment period). Since publication, the Agency has received several requests for additional time to submit comments. EPA is extending the period of time in which the Agency will accept public comments on the proposal for an additional 30 days.

**DATES:** The comment period for the proposed rule published September 23, 2010, at 75 FR 58024 is extended. Comments must be received on or before December 22, 2010. Comments postmarked after this date may not be considered.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2010-0192, by one of the following methods:

• <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

• *E-mail:* [OW-Docket@epa.gov](mailto:OW-Docket@epa.gov)

• *Mail:* U.S. Environmental

Protection Agency; EPA Docket Center (EPA/DC) Water Docket, MC 28221T; 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

• *Hand Delivery:* EPA Docket Center, 1301 Constitution Ave., NW., EPA West, Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OW-2010-0921. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA