

EPA's Proposed Greenhouse Gas Tailoring Rule

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Overview

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- Clean Air Act Refresher
- Johnson Memorandum
- Need for Tailoring Rule
- EPA's Legal Rationale
- Phases of Tailoring Rule
- State Action
- Importance of Commenting

Clean Air Act Refresher

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- PSD
 - Areas that meet NAAQS
 - Major stationary sources
 - 100 tpy (listed sources)
 - 250 tpy
 - Major modifications
 - Requires BACT
- Title V – 100 tpy of any regulated pollutant

Johnson Memorandum

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- December 18, 2008: response to *Massachusetts v. EPA* and EAB Deseret permit remand
- December 31, 2008 – petition to reconsider filed
- February 17, 2009 – Sierra Club's petition to reconsider granted
- October 7, 2009 – Published proposed policy
- Agency has preference for "actual control" – endorses Johnson Memorandum
- Comments due on or before December 7, 2009

Why is EPA Proposing the Tailoring Rule?

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- Light-duty Motor Vehicle Rule
 - Will require GHG emissions control
 - Will trigger PSD and Title V applicability requirements
- Impact on small sources
- EPA & State resources

EPA Legal Rationale

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Issue: EPA proposing different threshold for GHGs, but PSD and Title V thresholds are clear.

EPA's rationale for 25,000 tpy threshold:

- Judicial doctrine of absurd results
- Judicial doctrine of administrative necessity
- Phased approach

Phase I of Proposed Tailoring Rule

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- Six Primary GHGs
 - Carbon dioxide (CO₂)
 - Methane (CH₄)
 - Nitrous oxide (N₂O)
 - Hydrofluorocarbons (HFCs)
 - Perfluorocarbons (PFCs)
 - Sulfur Hexafluoride (SF₆)
- 25,000 tpy CO₂e applicability threshold
- Proposed range of 10,000 – 25,000 tpy for PSD "significance level"

Phase II of Proposed Tailoring Rule

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Within 5 years

- Evaluate thresholds
- Develop streamlining techniques
 - PTE definition
 - General permits
 - Presumptive BACT

Phase II of Proposed Tailoring Rule

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Within 6 years, either:

- Affirm the Phase I GHG thresholds
- Promulgate new thresholds
- Adopt other streamlining techniques
- Take other necessary action

State Action

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- States may be more stringent
- EPA will not disapprove any PSD SIPs or Title V programs that require permitting at lower levels

Submitting Comments

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- Comments due by December 28, 2009
- Importance of commenting
 - Significant differences in final GHG Reporting Rule
 - Preserve opportunity to challenge

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