

TABLE 1—2007–2009 FOURTH-HIGH 8-HOUR AVERAGE OZONE CONCENTRATIONS AND 2007–2009 DESIGN VALUES (PARTS PER MILLION) IN THE BOSTON-MANCHESTER-PORTSMOUTH (SE), NEW HAMPSHIRE AREA—Continued

| Location         | AQS site ID | 4th high 2007 | 4th high 2008 | 4th high 2009 | Design value (07–09) |
|------------------|-------------|---------------|---------------|---------------|----------------------|
| Nashua .....     | 330111011   | 0.081         | 0.067         | 0.066         | 0.071                |
| Portsmouth ..... | 330150014   | 0.078         | 0.069         | 0.070         | 0.072                |
| Rye .....        | 330150016   | 0.086         | 0.075         | 0.068         | 0.076                |

EPA's review of these data indicates that the Boston-Manchester-Portsmouth (SE), New Hampshire ozone nonattainment area has met the 1997 8-hour ozone NAAQS, based on 2007–2009 data. EPA believes these data, coupled with preliminary data available through June 15, 2010, indicate that the Boston-Manchester-Portsmouth (SE), New Hampshire area has also attained the standard as of its applicable attainment date of June 15, 2010. Thus, in accordance with CAA section 181(b)(2), EPA is also proposing to determine that the Boston-Manchester-Portsmouth (SE), New Hampshire area has attained the standard by its applicable attainment date.

EPA is soliciting public comment on the issues discussed in this notice or on other relevant matters pertaining to this rulemaking action. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

#### V. Proposed Actions

EPA is proposing to determine that the Boston-Manchester-Portsmouth (SE), New Hampshire 1997 8-hour ozone moderate nonattainment area continues to attain the 1997 8-hour ozone standard, based on complete, quality-assured data from 2007 through 2009. Data for 2010 that are available in AQS through June 30, 2010 are consistent with continued attainment. As provided in 40 CFR Section 51.918, if EPA finalizes this determination, the requirements for New Hampshire to submit planning SIPs related to attainment of the 1997 8-hour ozone NAAQS for this area remain suspended, for so long as the area continues to attain the standard. In addition, under section 181(b)(2)(A) of the Clean Air Act and the provisions of EPA's ozone implementation rule (*see* 40 CFR 51.902(a)), EPA is proposing to determine that this area has attained the 1997 ozone NAAQS by its applicable attainment date of June 15, 2010.

#### VI. Statutory and Executive Order Reviews

These actions propose to make determinations of attainment based on air quality, and would, if finalized, result in the continued suspension of certain Federal requirements, and would not impose additional requirements beyond those imposed by State law. For that reason, these proposed actions:

- Are 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to the 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 Clean Air Act; and
- Do 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, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: November 24, 2010.

**Ira W. Leighton,**

*Acting Regional Administrator, EPA New England.*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R10–OAR–2010–0921, FRL–9235–6]

#### Approval and Promulgation of Implementation Plans; Alaska: 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 Commissioner of the Alaska Department of Environmental Conservation (ADEC) to EPA on October 25, 2010, for parallel processing. The proposed SIP revision updates Alaska's Prevention of Significant Deterioration (PSD) program to reflect changes to the Federal PSD program relating to the permitting of greenhouse gas (GHG) emissions. EPA is proposing in this action to approve those revisions if the final SIP revision submitted by Alaska to EPA is consistent with the draft SIP revision.

**DATES:** Comments must be received on or before January 5, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2010-0921, by any of the following methods:

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

- *E-mail: R10-*

*Public Comments@epa.gov.*

- *Mail:* Scott Hedges, EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Scott Hedges, Office of Air, Waste and Toxics, AWT-107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R10-OAR-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 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.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

**FOR FURTHER INFORMATION CONTACT:** Scott Hedges at telephone number: (206) 553-0296, e-mail address: [hedges.scott@epa.gov](mailto:hedges.scott@epa.gov), or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:**

Throughout this document wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

**Table of Contents**

- I. What action is EPA proposing today?
- II. What is the background for the action that EPA is proposing today?
- III. What is EPA's analysis of Alaska's proposed SIP revision?
- IV. Proposed Action
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**I. What action is EPA proposing today?**

On October 25, 2010, ADEC submitted a draft revision to EPA for approval into the Alaska's SIP to update Alaska's PSD program to reflect changes to the Federal PSD program that would authorize the State of Alaska to regulate GHGs under its PSD program and establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Alaska's PSD permitting requirements for GHG emissions. ADEC subsequently clarified in an e-mail dated November 16, 2010, that its request is limited to updating the incorporation by reference date of 40 CFR 52.21 in 18 AAC 50.040(h) in order to incorporate the new definition of "subject to regulation" in 40 CFR 52.21(49) to clarify the meaning of the definition of "regulated NSR pollutant" in the Alaska SIP so as to make the Alaska SIP consistent with Federal PSD requirements for the regulation of GHGs.

Because this draft SIP revision is not yet State-effective, Alaska requested that EPA "parallel process" the SIP 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 before final promulgation by the State. 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 completing its rulemaking action.

In this case, the regulatory revisions submitted in Alaska's October 25, 2010, proposed SIP revision have already gone through public review and were adopted by the Commissioner of ADEC on September 27, 2010. On November 8, 2010, ADEC provided EPA with a revised draft submittal following review by the Alaska Department of Law. On November 16, 2010, ADEC advised EPA that the revisions that were filed by the Alaska Lieutenant Governor on November 9, 2010, will become effective as a matter of State law on December 8, 2010, and will be submitted as a final SIP revision before December 1, 2010. Therefore, EPA is processing this proposed rulemaking prior to Alaska's submission of the final SIP revision.

EPA is proposing to approve the update to 18 AAC 50.040(h) with respect to the definition of "subject to regulation" as a revision to the Alaska SIP if the final SIP revision relating to the PSD permitting of GHGs submitted by Alaska to EPA is consistent with the proposed SIP revision. Final approval of Alaska's SIP revision will make Alaska's SIP for GHG-emitting sources consistent with Federal PSD requirements for GHG emissions, including the GHG emission thresholds for PSD applicability. If changes are made to the SIP revision after this proposal, such changes will be acknowledged in EPA's final rulemaking action and, if such changes are significant, may require a reproposal and an additional public comment period.

**II. What is the background for the action that EPA is proposing today?**

On June 3, 2010 (effective August 2, 2010), EPA promulgated a final rulemaking tailoring the applicability criteria that determine which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD and title V permitting programs. See "Prevention of Significant Deterioration and title V Greenhouse Gas Tailoring Rule; Final Rule," (the Tailoring Rule), 75 FR 31514 (June 3, 2010).<sup>1</sup> In particular, by amending the definition of "subject to regulation," EPA established thresholds for GHGs with a phase-in approach for PSD applicability and established the first

<sup>1</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 Alaska's title V program.

two steps of the phase-in for the largest GHG-emitters. As EPA explained in the Tailoring Rule, the threshold limitations are necessary because without it, PSD would apply to all stationary sources that emit or have the potential to emit more than 100 or 250 tons of GHGs per year beginning on January 2, 2011. This is the date when EPA's recently promulgated Light Duty Vehicle Rule takes effect,<sup>2</sup> imposing control requirements for the first time on 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 tons per year applicability levels provided under a literal reading of the Clean Air Act (CAA or the Act) 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. See 75 FR 31514.

As explained in the Tailoring Rule, many State, local and Tribal area programs will likely be able to immediately implement the approach in the Tailoring Rule 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. 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.

On August 2, 2010, Alaska provided a letter to EPA explaining that its PSD rules only apply to pollutants "subject to regulation" at the time of adoption in July 1, 2004, and that Alaska thus did not have authority to issue PSD permits that address GHG emissions. By notice dated September 2, 2010, EPA issued a proposed "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," 75 FR 53892 (September 2, 2010) (GHG SIP Call). In that action, along with a companion proposal published at the same time, EPA took steps to ensure that in 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 in the GHG SIP Call 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 showed that 13 States, including Alaska, 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.<sup>3</sup>

In a companion rulemaking issued on the same date, EPA proposed a Federal Implementation Plan (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. See "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)

<sup>3</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.

(GHG FIP). Alaska was one of the States for which EPA proposed a SIP Call and a FIP because, as discussed above, Alaska advised EPA that it did not interpret its then current PSD regulations as providing it with the authority to regulate GHGs.

Alaska's proposed SIP revision that is the subject of this rulemaking, however, addresses this authority. Therefore, if the State submits its final SIP revision to EPA prior to the final rulemaking for the GHG SIP Call, EPA will not take final action on the GHG SIP Call for Alaska. Additionally, Alaska would not be subject to the FIP if EPA finalizes today's proposed approval of the Alaska's SIP revision.

### III. What is EPA's analysis of Alaska's proposed SIP revision?

The State of Alaska is currently a SIP-approved State for the PSD program, and has incorporated EPA's 2002 New Source Review (NSR) reform revisions for PSD into its SIP. See 72 FR 45378 (August 14, 2007). However, Alaska does not interpret its PSD rules that are currently in the SIP, which generally incorporate the Federal rules by reference, to be automatically updating to include newly designated regulated air pollutants such as GHGs. As discussed above, in a letter provided to EPA on August 2, 2010, Alaska notified EPA that the State did not then have the authority to regulate GHGs under the PSD program and thus was in the process of revising its regulations (the subject of this proposed action) to provide this authority.

The proposed rules submitted by ADEC to EPA with the proposed SIP revision updates its incorporation by reference of the Federal PSD requirements at 40 CFR 51.166 and 40 CFR 52.21–40 CFR 52.22 (Prevention of Significant Deterioration of Air Quality) to include all revisions to these Federal requirements as of August 2, 2010, the effective date of the Tailoring Rule. See 18 AAC 50.040(h). ADEC has requested that EPA approve this update only with respect to the definition of "subject to regulation" in 40 CFR 52.21(b)(49) promulgated in the Tailoring Rule (effective August 2, 2010), which in turn clarifies the meaning of the State definition of "regulated NSR pollutant."<sup>4</sup> As discussed below, ADEC intends to request that EPA approve

<sup>4</sup> 18 AAC 50.040(h)(4)(C)(i) states that the definition of "regulated NSR pollutant" in 40 CFR 52.21(b)(50) is not adopted and that that term shall have the meaning assigned to it in 18 AAC 50.990. The SIP-approved version of 18 AAC 50.990(92) states that "regulated NSR pollutant" has the meaning given in 40 CFR 51.166(b)(49), which is the same definition as in 40 CFR 52.21(b)(50).

<sup>2</sup> See "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule," 75 FR 25324 (May 7, 2010).

these rule revisions with respect to all other changes in a subsequent and separate SIP revision request.

As discussed above, unless EPA either approves the Alaska SIP revision authorizing the PSD permitting of GHG emissions by January 2, 2010, or unless EPA promulgates a FIP to do so, such sources will be unable to receive preconstruction permits and therefore may not be able to construct or modify in the State of Alaska after that date. Alaska's incorporation by reference of the new definition of "subject to regulation" at 40 CFR 52.21(b)(49) is consistent with EPA's regulation of GHG emissions under the Federal PSD program. Therefore, if the final SIP submitted by ADEC to EPA is consistent with the proposed SIP revision, EPA is proposing to approve this revision because Alaska's regulation is consistent with the CAA PSD requirements and its implementing regulations regarding GHGs.

#### IV. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve the State of Alaska's draft SIP revision that reflects changes to the Federal PSD program as of August 2, 2010, relating to the permitting of GHGs if the final SIP revision submitted by Alaska to EPA is consistent with the proposed SIP revision. This proposed SIP revision provides Alaska with the authority to regulate GHGs under its PSD program and 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 approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

Note that ADEC has made other changes to its rules for PSD permitting and other air regulations that it has not submitted as part of this draft SIP

revision (subject to this action) and does not intend to submit as part of its final SIP submission. However, ADEC does intend to submit these other rules and regulations as a subsequent SIP revision in the near future. Because of the need to approve as a SIP revision the changes relating to the PSD permitting of GHGs by January 2, 2011 or as soon thereafter as possible to ensure the State has adequate authority to issue PSD permits to subject sources emitting GHGs, once the requirements go into effect as a matter of Federal law, EPA believes it is appropriate to approve Alaska's revisions that update the Alaska PSD program to address GHG emissions as a SIP strengthening measure.

#### V. 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 Alaska, 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 19, 2010.

**Dennis J. McLerran,**  
Regional Administrator, Region 10.

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