

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[NH-01-48-7174a; A-1-FRL-7376-5]

#### Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Prevention of Significant Deterioration (PSD) of Air Quality Permit Requirements

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. The revision consists of a new rule, PART Env-A 623, "Prevention of Significant Deterioration (PSD) of Air Quality Permitting," that adopts into New Hampshire's SIP the federal PSD program provisions. The SIP revision also amends New Hampshire's permit procedural rule, PART Env-A 205, "Permit Notice and Hearing Procedures: Temporary Permits and Permits to Operate," to make the rule consistent with the new state PSD rule. The approval of this revision will make the New Hampshire PSD program consistent with the federal plan requirements for a SIP-approved PSD program. This action is being taken in accordance with the Clean Air Act.

**DATES:** This direct final rule is effective on December 27, 2002 without further notice, unless EPA receives adverse comment by November 27, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to Steven A. Rapp, Manager, Air Permits, Toxics and Indoor Programs, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA-New England, 1 Congress Street—Suite 1100, Boston, MA 02114-2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B-108, 1301 Constitution Avenue, NW., Washington DC; and the Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302-2033.

**FOR FURTHER INFORMATION CONTACT:** Brendan McCahill, (617) 918-1652; email at [McCahill.Brendan@epa.gov](mailto:McCahill.Brendan@epa.gov).

**SUPPLEMENTARY INFORMATION:** On August 6, 2001, the State of New Hampshire submitted a formal request to revise its State Implementation Plan (SIP). This notice approves New Hampshire's submitted revisions and solicits comments on this approval. The SIP revision adopts into New Hampshire's SIP the federal PSD program provisions as set forth in 40 CFR 52.21. The SIP revision also amends two sections of New Hampshire's permit procedural rules required to implement the new state PSD program; Part Env-A 205.03, "Applications Subject to PSD Requirements," and Part-A 205.04, "Applications Subject to Nonattainment Requirements." Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### I. Summary of SIP Revision

The following table summarizes the contents of this document.

##### Table of Contents

- I.A: What is the PSD Program?
- I.B: What is the history of the PSD program in New Hampshire?
- I.C: How will New Hampshire's SIP-approved PSD program under 40 CFR 51.166 differ from the delegated PSD program under 40 CFR 52.21?
- II. Final Action
- III. Administrative Requirements

#### I.A: What Is the PSD Program?

The Clean Air Act (CAA) requires new major sources and major modifications to major sources to obtain an air pollution permit before commencing construction. The PSD program is the set of regulations specifying the minimum permit requirements for new major sources or major modifications in areas that are in attainment of the national ambient air quality standards (NAAQS). The PSD program includes two major elements: (1) provisions for an air quality analysis that ensure new major sources or modifications do not violate NAAQS or applicable air quality increments and; (2) provisions for Best Available Control Technology (BACT) that require sources to install air pollutant controls and/or implement pollution reduction operations.

#### I.B: What Is the History of the PSD Program in New Hampshire?

In a March 18, 1982 letter to the Director of the New Hampshire Air Resources Agency, EPA delegated to New Hampshire the administrative provisions of the Federal PSD program under 40 CFR 52.21. Under the terms of the delegation, New Hampshire was responsible for: (1) receiving and processing PSD applications and (2) developing the preliminary determination and draft permit that documents New Hampshire's technical findings regarding the air impact analysis and BACT requirements. New Hampshire would then forward the preliminary determination and draft permit to EPA for final issuance. EPA retained authority to issue and enforce the final PSD permit.

On January 28, 1999, the New Hampshire Department of Environmental Services, Air Resources Division (ARD), submitted a SIP revision that consists of a new rule, PART Env-A 623, "Prevention of Significant Deterioration of Air Quality Permitting. The submittal was intended to adopt into New Hampshire's SIP the federal PSD program provisions as set forth in 40 CFR 52.21. However, due to issues with the federal citations referenced in the submittal, EPA could not fully approve the rule and therefore, did not take action on the submittal.

In a November 27, 2000 letter to the Regional Administrator, the ARD formally withdrew its January 28, 1999 SIP revision and requested full delegation to implement the federal PSD rules at 40 CFR 52.21 including the authority to issue and enforce PSD permits. In addition, the ARD requested authority to enforce PSD permits already issued by EPA. On July 9, 2001, EPA Region I approved the ARD's request to accept full delegation of the PSD program under 40 CFR 52.21.

On August 6, 2001, the ARD submitted SIP revisions that consist of new rule, PART Env-A 623 "Permit Notice and Hearing Procedures: Temporary Permits and Permits to Operate," that adopts into New Hampshire's SIP the federal PSD program provisions as set forth in 40 CFR 52.21. New Hampshire is also revising portions of its permit procedural rules, Env-A 205, "Permit Notice and Hearing Procedures: Temporary Permits and Permits to Operate," to make these rules consistent with the new state PSD rule.

### I.C: How Will New Hampshire's SIP-Approve PSD Program Under 40 CFR 51.166 Differ From the Delegated PSD Program Under 40 CFR 52.21?

There are two sets of PSD regulations. The first set, 40 CFR 51.166, specifies the minimum requirements that a State PSD air quality permit program under Part C of Title I of the CAA must contain in order to obtain approval by EPA as a revision to the SIP. The second set, 40 CFR 52.21, delineates the federal PSD program, which applies as part of the SIP for states that have not submitted a PSD program that meets the requirements of 40 CFR 51.166. New Hampshire's SIP revision PART Env-A 623 adopts by reference into the State's SIP portions of the federal PSD program as promulgated in 40 CFR 52.21. By adopting portions of the federal PSD program as well as certain other provisions, PART Env-A 623 satisfies the minimum plan approval requirements for a PSD program under 40 CFR 51.166.

Since the state's new PSD program includes all the federal PSD program elements, the state program requirements will be equivalent to the federal program. However, New Hampshire adopted public participation and permit appeal procedural requirements that are specific to the state in place of procedures under the federal program. The federally delegated PSD program follows the public participation procedural requirements found in EPA's consolidated permit procedure regulation at 40 CFR part 124. The federal consolidated permit process regulation addresses, among other things, the appeal process for several EPA permitting programs including the PSD program. The regulation requires that petitions of PSD permit decisions be addressed to Federal Environmental Appeals Board (EAB).

Under the SIP-approved PSD program, the appeal process follows the state's permit procedural rules for state-issued permits. With approval of New Hampshire's PSD rules, persons aggrieved by a PSD permit decision will now direct permit appeals to New Hampshire's Air Resources Council as required by the state's permit procedural requirements. If the Air Resources Council denies the appeal, the petitioner may request the state supreme court to hear the appeal.

EPA notes that New Hampshire's pending SIP-approved PSD rule did not define a date of the incorporated rule revision of 40 CFR 52.21. Without this date, New Hampshire believes its PSD rules will automatically incorporate and implement all future revisions to 40

CFR 52.21 without the need for additional state rulemaking. Typically, states need to revise their SIP-approved rules to comply with any revisions made to underlying federal rules.

### II. Final Action

EPA is approving New Hampshire's PART Env-A 623, "Prevention of Significant Deterioration (PSD) of Air Quality Permit Requirements." In addition, EPA is approving New Hampshire's Part Env-A 205.03, "Applications Subject to PSD Requirements," and Part-A 205.04, "Applications Subject to Nonattainment Requirements" adopted by the state on February 17, 1995 and amended on July 23, 2001.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective December 27, 2002 without further notice unless the Agency receives relevant adverse comments by November 27, 2002.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 27, 2002 and no further action will be taken on the proposed rule.

### III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule

will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

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. 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 2002. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. 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. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 3, 2002.

**Robert W. Varney**,  
Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart EE—New Hampshire**

2. Section 52.1520 is amended by adding paragraph (c)(60) to read as follows:

**§ 52.1520 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(60) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division August 6, 2001 and April 26, 1995.

(i) Incorporation by reference.  
(A) Section 623.01 and sections 623.03 through 623.06 of New Hampshire's rule PART Env-A 623 rule entitled, "Prevention of Significant Deterioration (PSD) Of Air Quality Permit Requirements." This regulation was adopted in the State of New Hampshire on July 23, 2001.

(B) New Hampshire's rules PART Env-A 205.03, "Applications Subject to PSD Requirements," and PART Env-A 205.04, "Applications Subject to Nonattainment Requirements." These regulations were adopted in the State of New Hampshire on February 22, 1995 and amended on July 23, 2001.

(ii) Additional materials.

(A) Letter from the New Hampshire Air Resources Division dated August 6, 2001 submitting a revision to the New Hampshire State Implementation Plan.

(B) Letter from the New Hampshire Air Resources Division dated April 26, 1995 submitting a revision to the New Hampshire State Implementation Plan.

(C) Nonregulatory portions of the State submittal.

3. In § 52.1525, Table 52.1525 is amended by adding new entries to existing state citations for PART Env-A 200 and PART Env-A 600 to read as follows:

**§ 52.1525—EPA-approved New Hampshire state regulations.**

\* \* \* \* \*

TABLE 52.1525—EPA-APPROVED RULES AND REGULATIONS <sup>1</sup>—NEW HAMPSHIRE

| Title/subject                     | State citation chapter <sup>2</sup> | Date adopted by State        | Date approved by EPA | Federal Register citation | 52.1520      | Explanations   |
|-----------------------------------|-------------------------------------|------------------------------|----------------------|---------------------------|--------------|--|
| *<br>Procedural Rules .....       | *<br>Env-A 200 .....                | *<br>2/17/95<br>&<br>7/23/01 | *<br>10/28/02        | *<br>67 FR 65710 .....    | *<br>(c)(60) | *<br>Approving Env-A 205.03 & Env-A 205.04 as amended 7/23/01        |
| *<br>Statewide Permitting System. | *<br>Env-A 600 .....                | *<br>7/23/01                 | *<br>10/28/02        | *<br>67 FR 65710 .....    | *<br>(c)(60) | *<br>Adding Part Env-A 623: New Hampshire's PSD permit requirements. |
| *<br>.....                        | *<br>.....                          | *<br>.....                   | *<br>.....           | *<br>.....                | *<br>.....   | *<br>.....   |

<sup>1</sup> These regulations are applicable statewide unless otherwise noted in the Explanation section.

<sup>2</sup> When the New Hampshire Department of Environmental Services was established in 1987, the citation chapter title for the air regulations changed from CH Air to Env-A.

4. Section 52.1529 is revised to read as follows:

**§ 52.1529 Significant deterioration of air quality.**

New Hampshire's Part Env-A 623, "Requirements for Prevention of Significant Deterioration Permits," as submitted on August 6, 2001, is approved as meeting the requirements of Subpart 1, Part C, Title I, of the Clean Air Act.

[FR Doc. 02-25857 Filed 10-25-02; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[Docket # ID-02-001; FRL-7398-1]

**Approval and Promulgation of Air Quality Implementation Plans; State of Idaho; Northern Ada County Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes**

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

**ACTION:** Direct final rule.

**SUMMARY:** On January 17, 2002, the State of Idaho requested EPA to redesignate the Northern Ada County "not classified" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS) and submitted a CO maintenance plan for Northern Ada County. In this action, EPA is approving the maintenance plan and redesignating the Northern Ada County CO nonattainment area to attainment.

**DATES:** This direct final rule will be effective December 27, 2002, unless EPA receives adverse comments by November 27, 2002. If relevant adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. Please note that if EPA receives relevant adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

**ADDRESSES:** Written comments may be mailed to: Steve Body, State and Tribal Programs Unit, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

Copies of the documents relevant to this action are available for public inspection during normal business

hours at the United States Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle WA.

**FOR FURTHER INFORMATION CONTACT:**

Steve Body, State and Tribal Programs Unit, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle WA., 98101, Telephone number: (206) 553-0782.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. What is the purpose of this action?
- II. What is the State's process to submit these materials to EPA?
- III. EPA's Evaluation of the Redesignation Request and Maintenance Plan
  - (a) The Area Must have Attained the Carbon Monoxide NAAQS
  - (b) The Area Must Have Met All Applicable Requirements Under Section 110 and Part D
    1. CAA Section 110 Requirements
    2. Part D Requirements
      - A. Section 172(c)(3)—Emissions Inventory
      - B. Section 172(c)(5)—New Source Review (NSR)
      - C. Section 172(c)(7)—Compliance With CAA section 110(a)(2): Air Quality Monitoring Requirements
    - (c) The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA
    - (d) The Area Must Show the Improvement in Air Quality is Due to Permanent and Enforceable Emission Reductions.
    - (e) The Area Must Have A Fully Approved Maintenance Plan Under CAA Section 175A
      1. Emissions Inventory—Attainment Year
      2. Demonstration of maintenance
      3. Monitoring Network and Verification of Continued Attainment
      4. Contingency Plan
  - IV. Conformity
  - V. Final Action
  - VI. Administrative Requirements

**I. What Is the Purpose of This Action?**

EPA is redesignating the Northern Ada County "not classified" CO nonattainment area from nonattainment to attainment and approving the maintenance plan that will keep the area in attainment for the next 10 years.

EPA originally designated the Northern Ada County area as nonattainment for CO under the provisions of the 1977 Clean Air Act (CAA) Amendments (see 43 FR 8962, March 3, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q). Under section 107(d)(1)(C) of the CAA, the Northern Ada County area was designated nonattainment for CO by operation of law because the area had been designated as nonattainment before November 15, 1990. The Northern Ada County area is classified

as an unclassified, or "not classified" CO nonattainment area because there were no violations of the CO standard in 1988 or 1989 prior to the 1990 Clean Air Act Amendments.

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA provides the requirements for redesignation. These are:

- (i) The Administrator determines that the area has attained the national ambient air quality standard;
- (ii) The Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the Act;
- (iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions;
- (iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,
- (v) the State containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before an area can be redesignated to attainment, all applicable State Implementation Plan (SIP) elements must be fully approved.

**II. What Is the State's Process To Submit These Materials to EPA?**

The CAA requires States to follow certain procedural requirements for submitting SIP revisions to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted by the State after reasonable notice and public hearing. The State then submits the SIP revision to EPA for approval.

The Idaho Department of Environmental Quality (IDEQ), which has regulatory authority for sources of air pollution in the Northern Ada County CO nonattainment area, developed the CO maintenance plan. On October 23, 2001, IDEQ notified the public of the public hearing on the plan. On November 27, 2001 IDEQ held the public hearing at their offices in Boise, Idaho. On January 17, 2002, the State of Idaho adopted the *Limited Maintenance Plan for the Northern Ada County Carbon Monoxide Not-Classified Nonattainment area*. On January 17, 2002, the State submitted the proposed SIP to EPA. EPA has determined that