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.

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 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.

[FR Doc. 2010–30493 Filed 12–3–10; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[40 CFR Part 52]

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.
RESTRICTED MATERIAL RESTRICTED THROUGH http://www.regulations.gov, considered to be CBI or otherwise protected 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, 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 revised SIP revision?
IV. Proposed Action
V. Statutory and Executive Order Reviews

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 proposal 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). 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
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, 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.

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)
(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 Federal 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
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.”
As discussed below, ADEC
intends to request that EPA approve

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

3 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.

4 18 AAC 50.040(b)(4)(c)(ii) states that the
definition of “regulated NSR pollutant” in 40 CFR
52.21(b)(50) is not adopted and that term shall
mean the meaning assigned to it in 18 AAC 50.099(b).
EPA has also determined that the SIP-approved version of 18 AAC 50.099(b)(2)
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).
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.

[FR Doc. 2010–30479 Filed 12–3–10; 8:45 am]
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