

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0143 to read as follows:

#### **§ 165.T07–0143 Safety Zone; Second Annual Space Coast Super Boat Grand Prix, Atlantic Ocean, Cocoa Beach, FL.**

(a) *Regulated area.* The following regulated area is a safety zone: all waters of the Atlantic Ocean located east of Cocoa Beach, FL and encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 28°22'16" N, 80°36'04" W; thence west to Point 2 in position 28°22'15" N, 80°35'39" W; thence south to Point 3 in position 28°19'47" N, 80°35'55" W; thence east to Point 4 in position 28°19'47" N, 80°36'22" W; thence north back to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Jacksonville in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Jacksonville or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Jacksonville by telephone at 904–564–7511, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or his designated representative.

(3) The Coast Guard will provide notice of the regulated area through advanced notice via Local Notice to Mariners, Broadcast Notice to Mariners, and by on-scene designated representatives.

(d) *Effective date and enforcement period.* This rule is effective from 10 a.m. on May 21, 2011 through 5:30 p.m. on May 22, 2011. The regulated area will be enforced from 10 a.m. until 4 p.m. on May 21, 2011, and 9 a.m. until 5:30 p.m. on May 22, 2011.

Dated: April 29, 2011.

**C.A. Blomme,**

*Captain, U.S. Coast Guard, Captain of the Port Jacksonville.*

[FR Doc. 2011–11341 Filed 5–9–11; 8:45 am]

**BILLING CODE 9110–04–P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 52**

**[EPA–R01–OAR–2010–0996, A–1–FRL9286–4]**

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

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a revision to the State Implementation Plan (SIP), submitted by Connecticut Department of Environmental Protection (DEP) to EPA on December 9, 2010, for parallel processing. DEP submitted the final version of this SIP revision on February 9, 2011. The SIP revision, which incorporates updates to DEP’s air quality regulations, includes two significant changes impacting the regulation of greenhouse gases (GHG) under Connecticut’s New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. First, the revision provides Connecticut with authority to issue PSD permits governing GHG. Second, the SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Connecticut’s PSD permitting requirements for their GHG emissions. The first change is necessary because Connecticut is required to apply its PSD program to GHG-emitting sources, and unless it does so (or unless EPA promulgates a federal implementation

plan (FIP) to do so), such sources will be unable to receive preconstruction permits and therefore may not be able to construct or modify. The second change is necessary, because without it, PSD requirements would apply at the 100 or 250 ton per year (tpy) levels otherwise provided under the Clean Air Act (CAA or Act), which would overwhelm Connecticut’s permitting resources. EPA is approving Connecticut’s February 9, 2011, SIP revision because the Agency has made the determination that this SIP revision is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHG. Additionally, EPA is responding to adverse comments received on EPA’s January 6, 2011, proposed approval of Connecticut’s December 9, 2010, SIP revision.

**DATES:** *Effective Date:* This rule will be effective May 10, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2010–0996. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information 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 through <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Air Programs Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Connecticut SIP, contact Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Mr. Dahl’s telephone number is (617) 918–1657; *e-mail address:* [dahl.donald@epa.gov](mailto:dahl.donald@epa.gov).

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**I. What is the background for this final action?**

EPA has recently undertaken a series of actions pertaining to the regulation of GHG that, although for the most part distinct from one another, establish the overall framework for today's final action for the Connecticut SIP. The first four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,<sup>1</sup> the "Johnson Memo Reconsideration,"<sup>2</sup> the "Light-Duty Vehicle Rule,"<sup>3</sup> and the "Tailoring Rule."<sup>4</sup> Taken together, these actions established regulatory requirements for GHG emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, will subject GHG emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. In a separate action, EPA called on the State of Connecticut and 12 other states with SIPs that do not provide authority to issue PSD permits governing GHG to revise their SIPs to provide such authority (the "GHG PSD SIP Call").<sup>5</sup> EPA established a deadline of March 1, 2011, for Connecticut to submit its GHG PSD SIP. Finally, in the most recent action, EPA proposed to implement a FIP authorizing PSD permitting for GHG for those states that are unable to revise their SIPs to provide that authority by the applicable

<sup>1</sup> "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

<sup>2</sup> "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

<sup>3</sup> "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

<sup>4</sup> "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

<sup>5</sup> "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; Final Rule." 75 FR 77698 (December 13, 2010).

deadline (the "GHG PSD FIP").<sup>6</sup> By a notice signed December 23, 2010, EPA finalized the FIP for seven states: Arizona, Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming.

On December 9, 2010, in response to the Tailoring Rule and earlier GHG-related EPA rules, and in anticipation of the GHG PSD SIP Call rulemaking, DEP submitted a draft revision to EPA for approval into the Connecticut SIP to: (1) Provide the State with the authority to regulate GHG under its PSD program; and (2) establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Connecticut's PSD permitting requirements for GHG emissions. Subsequently, on January 6, 2011, EPA published a proposed rulemaking to approve Connecticut's December 9, 2010, draft SIP revision under parallel processing. 76 FR 752. Specifically, Connecticut's December 9, 2010 draft SIP revision includes changes to Sections 22a-174-1 and 22a-174-3a of the Regulations of Connecticut State Agencies.<sup>7</sup> The changes include adopting definitions of greenhouse gases and carbon dioxide equivalent and applying the Tailoring Rule's thresholds for GHG permitting applicability. Detailed background information and EPA's rationale for the proposed approval are provided in EPA's January 6, 2011, **Federal Register** notice.

EPA's January 6, 2011, proposed approval was contingent upon the State of Connecticut providing a final SIP revision that was substantively the same as the revision proposed for approval by EPA in the January 6, 2011, proposed rulemaking. 76 FR 752. Connecticut provided its final SIP revision on February 9, 2011. While there are minor differences between the draft and final regulations, mainly to the format of internal references, EPA has determined that these differences do not warrant re-proposal of this action. The changes are mostly edits to the format for internal references within the regulation, e.g. changing "Table 3a(k)(1)" to "Table 3a(k)(1) of this subsection," plus one minor edit designed to clarify the original intent of the formula for calculating "carbon dioxide equivalent emissions." See Memorandum from the

<sup>6</sup> "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>7</sup> Connecticut's submittal also revises Section 22a-174-33; however, this section relates to the state's title V operating permit program and it is not the state's intention to incorporate any provision of this program into the SIP. As such, EPA is not taking final action to approve Connecticut's changes to Section 22a-174-33 in this rulemaking.

Connecticut Commissioners' Office to the Connecticut Legislative Regulation Review Committee at 2 (Jan. 25, 2011).

**II. Analysis of Connecticut's SIP Revision**

Section 110(k)(3) of the CAA provides that EPA shall approve a SIP revision as a whole if it meets all of the applicable requirements of the CAA. Connecticut received a SIP call because its PSD program does not apply to GHG. As a result, Connecticut is required to submit a SIP revision that applies PSD to GHG and do so either at the Tailoring Rule thresholds or at lower thresholds. Connecticut is required to demonstrate that it has adequate resources for implementation if the state establishes lower thresholds.

Connecticut has submitted a SIP revision that provides this authority. Connecticut's SIP revision adopts new definitions for "carbon dioxide equivalent emissions" and "greenhouse gases" into section 22a-174-1. These new definitions were necessary because the state's definition of air pollutant excluded carbon dioxide except for certain state rules. Connecticut's PSD regulation, found in section 22a-174-3a, is not one of the excepted rules.

To fully implement EPA's Tailoring Rule, Connecticut amended several subsections in section 22a-174-3a. Section 22a-174-3a contains the state's permitting requirements for minor new source review, PSD, and nonattainment new source review. Subsections amended were subsection (1) which adds GHG emission thresholds to the general applicability section, subsection (d)(3)(H) which requires the applicant to incorporate best available control technology (BACT) for GHG emissions, subsection (j) which establishes the thresholds for GHG emissions for applying BACT, and subsection (k) which establishes GHG emission thresholds for PSD permitting. Connecticut has adopted the thresholds contained in EPA's Tailoring Rule for all of the thresholds established in the individual subsections. Connecticut did not choose to establish a lower threshold than required by the Tailoring Rule.

EPA has determined these changes to Connecticut's regulations meet the requirements of the SIP call. Thus these changes are consistent with the CAA and its implementing regulations regarding PSD permit requirements for GHG emissions. The thresholds for permitting GHG emissions established in this submittal are the same as EPA's Tailoring Rule, and therefore comply with the requirements of the SIP call.

### III. What is EPA's response to comments received on this action?

EPA received two sets of comments on the January 6, 2011, proposed rulemaking to approve revisions to Connecticut's SIP. One set of comments, provided by the Sierra Club, was in favor of EPA's January 6, 2011 proposed action. The other set of comments, provided by the Air Permitting Forum, raised concerns with final action on EPA's January 6, 2011 proposed action. A full set of the comments provided by both the Sierra Club and Air Permitting Forum (hereinafter referred to as "the Commenter") is provided in the docket for today's final action. A summary of the adverse comments and EPA's responses are provided below.

Generally, the adverse comments fall into five categories. First, the Commenter asserts that EPA's SIP Call was unauthorized and imposed too short a deadline for Connecticut to act to revise its SIP. Second, the Commenter asserts that PSD requirements cannot be triggered by GHG. Third, the Commenter expresses concerns regarding EPA's previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds will not be obligated under federal law to obtain PSD permits prior to a SIP revision incorporating those thresholds. The Commenter explains that the planned SIP approval narrowing action is inapplicable to this action and, if applicable, is illegal. Fourth, the Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Lastly, the Commenter states: "EPA should explicitly state in any final rule that the continued enforceability of these provisions in the Connecticut SIP is limited to the extent to which the federal requirements remain enforceable." EPA's response to these five categories of comments is provided below.

*Comment 1:* The first comment asserts that EPA's SIP Call was unauthorized and imposed too short a deadline for Connecticut to act to revise its SIP. This is because, according to the Commenter, the recent *Cinergy* decision allows sources in the State to rely on the provisions of the currently approved PSD SIP to obtain permits for construction or modification. *United States v. Cinergy Corp.*, 623 F.3d 455 (7th Cir. 2010).

*Response 1:* EPA established the requirement that Connecticut submit a corrective SIP revision to provide for the authority to issue PSD permits for GHG

emissions in the GHG PSD SIP call rulemaking. As part of that rulemaking, EPA allowed states to choose not to object to a short timeframe for amending their SIPs, and the deadline established for submitting Connecticut's PSD SIP revision is the date requested by the State. EPA has not reopened either of these issues in the current rulemaking. The only issues relevant to this rulemaking concern whether Connecticut's SIP submission meets the requirements of the SIP call and therefore should be approved. Issues concerning the validity of the SIP call and the deadlines it established, including the comments raised by the commenter, may have been relevant for the SIP call rulemaking but are not relevant for this rulemaking. Accordingly, these comments are not relevant for this rulemaking.

In any event, EPA disagrees with the comment and the Commenter's interpretation of the *Cinergy* decision. EPA specifically discussed the *Cinergy* decision in the SIP call itself, 75 FR 77705-06 n.16. As we stated in the SIP call, EPA has long interpreted the PSD applicability provisions in the CAA to be self-executing,<sup>8</sup> that is, they apply by their terms so that a source that emits any air pollutant subject to regulation becomes subject to PSD—and, therefore, cannot construct or modify without obtaining a PSD permit—and these provisions apply by their terms in this manner regardless of whether the state has an approved SIP PSD program. What's more, until an applicable implementation plan is in place—either an approved SIP or a FIP—no permitting authority is authorized to issue a permit to the source. In the recent *Cinergy* decision, the 7th Circuit confronted a case that, at the district court level, involved both nonattainment NSR and PSD claims, with the appeal involving substantive nonattainment NSR issues and evidentiary PSD issues. However, in its opinion, the 7th Circuit described the substantive nonattainment NSR issue as if it applied to both nonattainment NSR and PSD. On that issue, the Court held that sources could continue to abide by permitting requirements in an existing SIP until amended, even if that SIP does not comport with the law. Again, notwithstanding the Court's broader description of the case, that holding applied only to the nonattainment NSR claims because, again, only those claims were before it on that issue. *United States v. Cinergy Corp.*, 623 F.3d 455 (7th Cir. 2010). In stark contrast to the nonattainment provisions actually at

<sup>8</sup> EPA is likewise also not reopening this issue in this rulemaking.

issue in *Cinergy*—which are not self-executing and must therefore be enforced through a SIP—PSD is self-executing; it is the statute (CAA section 165), not just the SIP, that prohibits a source from constructing a project without a permit issued in accordance with the Clean Air Act. Because the PSD provisions were simply not before the *Cinergy* Court in the appeal on this issue, the commenter's reading of that portion of the opinion to apply to PSD is in error. As the commenter noted, in a petition for rehearing that was primarily devoted to other issues, EPA asked the Court to revise its opinion to make clear that its holding on the relevant issue was limited to the nonattainment provisions in play on that issue. The Court denied the petition for rehearing and, accordingly, did not revise its opinion. However, the Court did not explain its reasons for denying the petition for rehearing, and therefore did not address why it would not revise its opinion. We note that *Cinergy*, in its response to EPA's petition for reconsideration, did not contest that the relevant issue concerned only the nonattainment provisions, and not the PSD provisions. Accordingly, we do not read the Court's denial of the petition for rehearing as any kind of affirmation that in the Court's view, its decision on the relevant issue extends beyond the nonattainment provisions in play on that issue. Further, we believe that the fact that all of the parties to the case recognized that only the nonattainment provisions were in play on the relevant issue could explain the Court's denial of EPA's request to revise the opinion.

*Comment 2:* The Commenter asserts that PSD requirements cannot be triggered by GHG. In its letter, the Commenter states: "[n]o area in the State of Connecticut has been designated attainment or unclassifiable for greenhouse gases (GHGs), as there is no national ambient air quality standard (NAAQS) for GHGs. Therefore, GHGs cannot trigger PSD permitting requirements." The Commenter notes that it made this argument in detail in comments submitted to EPA on the Tailoring Rule and other related GHG rulemakings.<sup>9</sup> Finally, the Commenter states that "EPA should immediately provide notice that it is now interpreting the Act not to require that GHGs trigger PSD and allow

<sup>9</sup> The Commenter recited that it had attached those previously submitted comments to its comments on the proposed rulemaking related to this action, although it appears they were neither attached nor forwarded to the docket for this action. Nevertheless, EPA is aware of the Commenter's prior comments and, as explained below, does not find them persuasive.

Connecticut to rescind that portion of its rules and implement the program consistent with the proper interpretation such that GHGs do not trigger PSD permitting \* \* \*

*Response 2:* EPA established the requirement that PSD applies to all pollutants newly subject to regulation, including non-NAAQS pollutants, in earlier national rulemakings concerning the PSD program, and EPA has not reopened that issue in this rulemaking. Accordingly, these comments are not relevant to this rulemaking and are time-barred as to the earlier national rulemakings. In addition, EPA has explained in detail, in recent rulemakings concerning GHG PSD requirements, its reasons for disagreeing with these comments.

In an August 7, 1980, rulemaking at 45 FR 52676, 45 FR 52710–52712, and 45 FR 52735, EPA stated that a “major stationary source” was one that emitted “any air pollutant subject to regulation under the Act” at or above the specified numerical thresholds, and defined a “major modification,” in general, as a physical or operational change that increased emissions of “any pollutant subject to regulation under the Act” by more than an amount that EPA variously termed as *de minimis* or significant. In addition, in EPA’s NSR Reform rule at 67 FR 80186 and 67 FR 80240 (December 31, 2002), EPA added to the PSD regulations the new definition of “regulated NSR pollutant” (currently codified at 40 CFR 52.21(b)(50) and 40 CFR 51.166(a)(49)), noted that EPA added this term based on a request from a commenter to “clarify which pollutants are covered under the PSD program,” and explained that in addition to criteria pollutants for which a NAAQS has been established, “[t]he PSD program applies automatically to newly regulated NSR pollutants, which would include final promulgation of an NSPS [new source performance standard] applicable to a previously unregulated pollutant.” *Id.* at 67 FR 80240 and 67 FR 80264. Among other things, the definition of “regulated NSR pollutant” includes “[a]ny pollutant that otherwise is subject to regulation under the Act.” See 40 CFR 52.21(b)(50)(d)(iv); see also 40 CFR 51.166(a)(49)(iv).

In any event, EPA disagrees with the Commenter’s underlying premise that PSD requirements are not triggered for GHG when GHG became subject to regulation as of January 2, 2011. As just noted, this has been well-established and discussed in connection with prior EPA actions, including, most recently, the Johnson Memo Reconsideration and the Tailoring Rule. In addition, EPA’s

November 18, 2010, proposed rulemaking notice provides the general basis for the Agency’s rationale that GHG, while not a NAAQS pollutant, can trigger PSD permitting requirements. The November 18, 2010, notice also refers the reader to the preamble to the Tailoring Rule for further information on this rationale. In that rulemaking, EPA addressed at length the comment that PSD can be triggered only by pollutants subject to the NAAQS and concluded that such an interpretation of the Act would contravene Congress’s unambiguous intent. See 75 FR 31560–31562. Further discussion of EPA’s rationale for concluding that PSD requirements are triggered by non-NAAQS pollutants such as GHG appears in the Tailoring Rule Response to Comments document (“Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA’s Response to Public Comments”), pp. 34–41; and in EPA’s response to motions for a stay filed in the litigation concerning those rules (“EPA’s Response to Motions for Stay,” *Coalition for Responsible Regulation v. EPA*, DC Cir. No. 09–1322 (and consolidated cases)), at pp. 47–59, and are incorporated by reference here. These documents have been placed in the docket for today’s action.

*Comment 3:* The Commenter expresses concerns regarding the legality of narrowing prior SIP approvals if states cannot interpret their regulations to include the Tailoring Rule thresholds within the phrase “subject to regulation.”

*Response 3:* While EPA does not agree with the Commenter’s assertion that the narrowing approach discussed in EPA’s Tailoring Rule is illegal, the validity of the narrowing approach is irrelevant to the action that EPA is today taking for Connecticut’s February 9, 2011, SIP revision. EPA did not propose to narrow its approval of Connecticut’s SIP as part of this action, and in today’s final action, EPA is acting to approve a SIP revision submitted by Connecticut and is not otherwise narrowing its approval of prior submitted and approved provisions in the Connecticut SIP. Accordingly, the legality of the narrowing approach is not at issue in this rulemaking.

*Comment 4:* The Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Specifically, the Commenter refers to the statutory requirements and executive orders for the Paperwork Reduction Act, the Regulatory Flexibility Act (RFA), the Unfunded Mandates Reform Act, and Executive Orders 12866 (OMB review of significant regulatory actions), 13175

(tribal implications), 13211 (economically significant regulatory action), and 13132 (Federalism). Additionally, the Commenter mentions that EPA has never analyzed the costs and benefits associated with triggering PSD for stationary sources in Connecticut, much less nationwide.

*Response 4:* EPA disagrees with the Commenter’s statement that EPA has failed to meet applicable statutory and executive order review requirements. As stated in EPA’s proposed approval of Connecticut’s December 9, 2010 proposed SIP revision, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. Accordingly, EPA approval, in and of itself, does not impose any new information collection burden, as defined in 5 CFR 1320.3(b) and (c), that would require additional review under the Paperwork Reduction Act. In addition, this SIP approval will not have a significant economic impact on a substantial number of small entities, beyond that which would be required by the state law requirements, so a regulatory flexibility analysis is not required under the RFA. Accordingly, this rule is appropriately certified under section 605(b) of the RFA. Moreover, as this action 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 mandates or significantly or uniquely affect small governments, such that it would be subject to the Unfunded Mandates Reform Act. 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. Finally, this action does not have federalism implications that would make Executive Order 13132 applicable, 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 CAA.

Today’s rule is a routine approval of a SIP revision, approving state law, and does not impose any requirements beyond those imposed by state law. To the extent these comments are directed more generally to the application of the statutory and executive order reviews to the required regulation of GHG under PSD programs, these comments are irrelevant to the approval of state law in

today's action. However, EPA provided an extensive response to similar comments in promulgating the Tailoring Rule. EPA refers the Commenter to the sections in the Tailoring Rule entitled "VII. Comments on Statutory and Executive Order Reviews," 75 FR 31601–31603, and "VI. What are the economic impacts of the final rule?," 75 FR 31595–31601. EPA also notes that today's action does not in and of itself trigger the regulation of GHG. To the contrary, GHG are already being regulated nationally, and sources in Connecticut that are subject to the PSD program are required to obtain a permit from a PSD program that addresses GHG emissions consistent with the Act's requirements. Today's action simply approves existing state laws that provide such a PSD program.

*Comment 5:* The Commenter states that "EPA should explicitly state in any final rule that the continued enforceability of these provisions in the Connecticut SIP is limited to the extent to which the federal requirements remain enforceable." Further, the Commenter remarks on the ongoing litigation in the U.S. Court of Appeals for the DC Circuit. Specifically, regarding EPA's determination that PSD can be triggered by GHG or is applicable to GHG, the Commenter mentions that "if the DC Circuit and/or Supreme Court determine that EPA's approach to regulating GHGs under the PSD program is invalid, the Connecticut rules should be approved in a manner that they would automatically sunset."

*Response 5:* EPA believes that it is most appropriate to take actions that are consistent with the federal regulations that are in place at the time the action is being taken. To the extent that any changes to federal regulations related to today's action result from pending legal challenges or other actions, EPA will process appropriate SIP revisions in accordance with the procedures provided in the Act and EPA's regulations. EPA notes that in an order dated December 10, 2010, the United States Court of Appeals for the DC Circuit denied motions to stay EPA's regulatory actions related to GHG. *Coalition for Responsible Regulation, Inc. v. EPA*, Nos. 09–1322, 10–1073, 10–1092 (and consolidated cases), Slip Op. at 3 (D.C. Cir. December 10, 2010) (order denying stay motions).

#### IV. What is the effect of this final action?

Final approval of Connecticut's February 9, 2011 SIP revision will make Connecticut's SIP adequate with respect to PSD requirements for GHG-emitting sources, thereby negating the need for a

GHG PSD FIP. Furthermore, final approval of Connecticut's SIP revision will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule (75 FR 31514, June 3, 2010), ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements. Pursuant to section 110 of the CAA, EPA is approving changes made in Connecticut's February 9, 2011, proposed SIP revision into the State's SIP.

The changes to Connecticut's SIP-approved PSD program that EPA is approving today are to Connecticut's rules which have been formatted to conform to Connecticut's rule drafting standards for Sections 22a–174–1 and 3a, 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 Connecticut submittal, EPA performed a line-by-line review of Connecticut's proposed SIP changes and has determined that the provisions that EPA is approving today are consistent with the Tailoring Rule. Furthermore, EPA has determined that the February 9, 2011, revision to Connecticut's SIP is consistent with section 110 of the CAA. *See, e.g.,* Tailoring Rule, at 75 FR 31561.

#### V. When is this action effective?

The effective date of today's final action is the date that this notice is published in the **Federal Register**. In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective on the date of publication. The effective date upon publication of this notice for this action is authorized under 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule provides sources emitting GHG at or above the higher emissions thresholds with a permitting authority from which it can seek the permits which, prior to this rule, federal law already required them to seek, and relieves the sources within the State from considering the lower emissions thresholds for GHG permitting purposes. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for

this action to become effective immediately upon publication.

#### VI. Final Action

EPA is taking final action to approve the State of Connecticut's February 9, 2011 SIP revision, which includes updates to Connecticut's air quality regulations, sections 22a–174–1 and 22a–174–3a relating to PSD requirements for GHG-emitting sources. Significantly, Connecticut's February 9, 2011, SIP revision: (1) Provides the State with the authority to regulate GHG under its PSD program, and (2) establishes appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the determination that the February 9, 2011 SIP revision is approvable because it is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHG.

#### VII. 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 action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 (Public Law 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, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Greenhouse gases, Incorporation by reference, Intergovernmental relations, and

Reporting and recordkeeping requirements.

Dated: March 15, 2011.

For H. Curtis Spalding,

**Ira W. Leighton,**

*Acting Regional Administrator, EPA New England.*

40 CFR part 52 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 H—Connecticut

■ 2. Section 52.370 is amended by adding paragraph (c)(99) to read as follows:

##### § 52.370 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(99) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on February 9, 2011.

(i) Incorporation by reference. (A) The additions of subsections (21) and (49) to Section 22a–174–1, effective January 28, 2011.

(B) The revisions to Sections 22a–174–3a(a)(1)(H) through (J), Sections 22a–174–3a(d)(3)(H), Sections 22a–174–3a(j)(1)(E) through (I), Sections 22a–174–3a(k)(1) through (k)(2), and Sections 22a–174–3a(k)(4), effective January 28, 2011.

[FR Doc. 2011–11218 Filed 5–9–11; 8:45 am]

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#### DEPARTMENT OF HOMELAND SECURITY

#### Federal Emergency Management Agency

#### 44 CFR Part 64

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–8179]

#### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain

management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

**DATES: Effective Dates:** The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal