

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.917 to read as follows:

§ 165.917 Safety Zones; Annual Swim Events in the Captain of the Port Detroit Zone.

(a) *Location.* The following locations are designated as safety zones: All waters of Lake Erie within positions 41–29′–00.04″ N 082–40′–48.16″ W to 41–29′–19.28″ N 082–40′–38.97″ W to 41–29′–02.51″ N 082–40′–20.82″ W to 41–28′–45.52″ N 082–40′–35.75″ W then following the shoreline to the point of origin. In the event that weather requires changing locations an alternate race course site will encompass all waters of Lake Erie, Sandusky Bay, Cedar Point, OH extending outward 100 yards on either side of a line running between 41–28′–38.59″ N 082–41′–10.51″ W and 41–28′–17.25″ N 082–40′–54.09″ W running adjacent to the Cedar Point Marina. These coordinates are North American Datum of 1983 (NAD 83).

(b) *Enforcement period.* These safety zones will be enforced two consecutive mornings during the first or second week in September. Exact dates and times will be determined annually and published annually in the **Federal Register** via a Notice of Enforcement.

(c) *Definitions.* The following definitions apply to this section:

(1) *“On-scene Representative”* means any Coast Guard Commissioned, warrant, or petty officer designated by the Captain of the Port Detroit to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other actions authorized by the Captain of the Port.

(2) *“Public vessel”* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or

anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative.

(2) These safety zones are closed to all vessel traffic, excepted as may be permitted by the Captain of the Port Detroit or his designated representative. All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) All vessels must obtain permission from the Captain of the Port or his designated representative to enter, move within, or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels must operate at the minimum speed necessary to maintain a safe course.

(e) *Exemption.* Public vessels, as defined in paragraph (b) of this section, are exempt from the requirements in this section.

(f) *Waiver.* For any vessel, the Captain of the Port Detroit or his designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

(g) *Notification.* The Captain of the Port Detroit will notify the public that the safety zones in this section are or will be enforced by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone is cancelled.

Dated: August 6, 2012.

J. E. Ogden,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2012–20092 Filed 8–15–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R01–OAR–2011–0453, FRL–9616–1]

Approval and Promulgation of Air Quality Implementation Plans; Vermont: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Vermont State Implementation Plan (SIP) relating to regulation of Greenhouse Gases (GHGs) under Vermont’s Prevention of Significant Deterioration (PSD) program. This revision was submitted by Vermont, through the Vermont Department of Environmental Conservation (VT DEC), Air Pollution Control Division on February 14, 2011. It is intended to align Vermont’s regulations with EPA’s “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule.” EPA is proposing to approve the revision because the Agency has made the preliminary determination that the SIP revision, already adopted by Vermont as a final effective rule, is in accordance with the Clean Air Act (CAA or Act) and EPA regulations regarding PSD permitting for GHGs. The SIP submittal also contains proposed amendments to several other sections of Vermont’s SIP not directly related to GHG permitting which EPA is not acting on at this time.

DATES: Comments must be received on or before September 17, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2011–0453, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email:* dahl.donald@epa.govmailto:

3. *Fax:* (617) 918–0657.

4. *Mail:* “Docket Identification Number EPA–R01–OAR–2011–0453”, Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.

5. *Hand Delivery or Courier:* Deliver your comments to: 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. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R01–OAR–2011–0453." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at 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 through www.regulations.gov or email, information that you consider to be CBI or otherwise protected. The 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 email comment directly to EPA without going through www.regulations.gov, your email 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., 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 form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Office of Ecosystem Protection, 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, Boston, Massachusetts. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

In addition, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency; Air Pollution Control Division, Agency of Natural Resources, 186 Mad River Park, Waitsfield, VT.

FOR FURTHER INFORMATION CONTACT: For information regarding the Vermont 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; email address: dahl.donald@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. What action is EPA proposing in this document?

On February 14, 2011, the State of Vermont submitted a formal revision to its State Implementation Plan (SIP). The revisions establish thresholds for GHG emissions in Vermont's PSD regulations at the same emissions thresholds and in the same time-frames as those specified by EPA in the "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule" (75 FR 31514), hereafter referred to as the "Tailoring Rule," ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements for GHGs that they emit. The revisions to the SIP clarify the applicable thresholds in the Vermont SIP, and address the flaw discussed in the "Limitation of

Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010) (the "PSD SIP Narrowing Rule"). In today's action, pursuant to section 110 of the CAA, EPA is proposing to approve these revisions into the Vermont SIP.

EPA is not proposing to take action on various other revisions to Vermont's state implementation plan contained in the February 14, 2011 submittal. Those are changes to Vermont Air Pollution Control Regulations, Chapter 5, Sections 5–101 (changes to the definitions of Emergency use engine, Federal Land Manager, and Public Notice), 5–251, 5–252, 5–401 (except for 5–401(16)), 5–402, 5–404, 5–406, 5–501, and 5–502.

II. What is the background for the action by EPA in this document?

This section briefly summarizes EPA's recent GHG-related actions that provide the background for today's proposed action. More detailed discussion of the background is found in the preambles for those actions. In particular, the background is contained in what we call the GHG PSD SIP Narrowing Rule,¹ and in the preambles to the actions cited therein.

A. GHG-Related Actions

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's proposed action on the Vermont SIP. 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,² the "Johnson Memo Reconsideration,"³ the "Light-Duty Vehicle Rule,"⁴ and the "Tailoring Rule." Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when

¹ "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule." 75 FR 82536 (Dec. 30, 2010).

² "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (Dec. 15, 2009).

³ "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (Apr. 2, 2010).

⁴ "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

PSD is implemented through the SIP system. In December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP call and, for some of these states, a Federal Implementation Plan (FIP).⁵ Recognizing that other states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tpy of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA issued the GHG PSD SIP Narrowing Rule. Under that rule, EPA withdrew its approval of the affected SIPs to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the “error correction” provisions of CAA section 110(k)(6).

B. Vermont's Actions

On July 22, 2010, Vermont provided a letter to EPA, in accordance with a request to all States from EPA in the Tailoring Rule, with confirmation that the State has the authority to regulate GHG in its PSD program. The letter also confirmed that current Vermont rules require regulating GHGs at the existing 50 tpy threshold, rather than at the

higher thresholds set in the Tailoring Rule. See the docket for this proposed rulemaking for a copy of Vermont's letter.

In the SIP Narrowing Rule, published on December 30, 2010, EPA withdrew its approval of Vermont's SIP (among other SIPs) to the extent the SIP applies PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the Tailoring Rule.⁶ As a result, Vermont's current approved SIP provides the state with authority to regulate GHGs, but only at and above the Tailoring Rule thresholds; and requires new and modified sources to receive a federal PSD permit based on GHG emissions only if they emit at or above the Tailoring Rule thresholds.

The basis for this SIP revision is that limiting PSD applicability to GHG sources to the higher thresholds in the Tailoring Rule is consistent with the SIP provisions that provide required assurances of adequate resources, and thereby addresses the flaw in the SIP that led to the SIP Narrowing Rule. Specifically, CAA section 110(a)(2)(E) includes as a requirement for SIP approval that States provide “necessary assurances that the State * * * will have adequate personnel [and] funding * * * to carry out such [SIP].” In the Tailoring Rule, EPA established higher thresholds for PSD applicability to GHG-emitting sources on grounds that the states generally did not have adequate resources to apply PSD to GHG-emitting sources below the Tailoring Rule thresholds,⁷ and no State, including Vermont, asserted that it did have adequate resources to do so.⁸ In the SIP Narrowing Rule, EPA found that the affected states, including Vermont, had a flaw in their SIPs at the time they submitted their PSD programs, which was that the applicability of the PSD programs was potentially broader than the resources available to them under their SIPs.⁹ Accordingly, for each affected state, including Vermont, EPA concluded that EPA's action in approving the SIP was in error, under CAA section 110(k)(6), and EPA rescinded its approval to the extent the PSD program applies to GHG-emitting sources below the Tailoring Rule thresholds.¹⁰ EPA recommended that States adopt a SIP revision to incorporate the Tailoring Rule

thresholds, thereby (i) assuring that under State law, only sources at or above the Tailoring Rule thresholds would be subject to PSD; and (ii) avoiding confusion under the Federally approved SIP by clarifying that the SIP applies to only sources at or above the Tailoring Rule thresholds.¹¹

III. What is EPA's analysis of Vermont's SIP revision?

The regulatory revisions that VT DEC submitted on February 14, 2011 establish thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under Vermont's PSD program. The revisions also include unrelated changes to other portions of the Vermont air permitting regulations. Specifically, the submittal includes changes to Vermont's regulations at Chapter 5, Air Pollution Control, Subchapter I (Definitions), Subchapter II (Prohibitions), Subchapter IV (Operations and Procedures), and Subchapter V (Review of New Air Contaminant Sources).

Vermont is currently a SIP-approved state for the PSD program. In a letter provided to EPA on July 22, 2010, Vermont notified EPA of its interpretation that the State currently has the authority to regulate GHGs under its PSD regulations. The current Vermont program (adopted prior to the promulgation of EPA's Tailoring Rule) applies to major stationary sources (having the potential to emit at least 50 tpy or more of a regulated NSR pollutant) or major modifications constructing in areas designated attainment or unclassifiable with respect to the NAAQS.

The amendments to Subchapter I that EPA is proposing to approve into Vermont's SIP include: new definitions of “Greenhouse Gases” and “Subject to Regulation,” amendments to the definition of “Major Stationary Source,” and the addition of a provision regarding significance levels of greenhouse gases to the definition of “Significant.” EPA is also proposing to approve the classification of certain sources of greenhouse gas emissions as air contaminant sources in Subchapter IV, section 5–401(16).

A. Greenhouse Gases

The changes to Vermont's PSD program regulations regarding greenhouse gases are in most respects substantively the same as the amendments to the federal PSD regulatory provisions in EPA's Tailoring

⁵ Specifically, by notice dated December 13, 2010, EPA finalized a “SIP Call” that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. “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,” 75 FR 77698 (Dec. 13, 2010). EPA has made findings of failure to submit that would apply in any state unable to submit the required SIP revision by its deadline, and finalized FIPs for such states. See, e.g., “Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases,” 75 FR 81874 (Dec. 29, 2010); “Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan,” 75 FR 82246 (Dec. 30, 2010). Because Vermont's SIP already authorizes Vermont to regulate GHGs once GHGs became subject to PSD requirements on January 2, 2011, Vermont was not subject to the proposed SIP Call or FIP.

⁶ “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule,” 75 FR 82536 (Dec. 30, 2010).

⁷ Tailoring Rule, 75 FR 31517.

⁸ SIP Narrowing Rule, 75 FR 82540.

⁹ *Id.* at 82542.

¹⁰ *Id.* at 82544.

¹¹ *Id.* at 82540.

Rule. However, there are several issues that we note here.

First, Vermont submitted as part of its SIP revision its entire definition of “significant” in Section 5–101, not just the addition made to address greenhouse gases. Vermont’s definition of “significant” in Section 5–101 departs from EPA’s definition of “significant” at 40 CFR 51.166(b)(23) in two ways. On the one hand, Vermont provides significance levels for several pollutants (asbestos, mercury, beryllium, and vinyl chloride) that are not listed in the federal regulation. On the other hand, Vermont fails to provide significance levels for several pollutants (particulate matter 2.5 microns or less in diameter, municipal waste combustor organics, municipal waste combustor metals, municipal waste combustor acid gases, and municipal solid waste landfill emissions) that are listed in the federal regulation. In the first case, the issue is moot because asbestos, mercury compounds, beryllium compounds, and vinyl chloride are all listed as hazardous air pollutants under Section 112(b) of the Clean Air Act, and Section 112(b)(6) provides that PSD does not apply to hazardous air pollutants listed under Section 112. In the case of the other pollutants, however, the situation is more complex. Vermont’s regulation neither specifically provides significance levels for these pollutants (particulate matter 2.5 microns or less in diameter, municipal waste combustor organics, municipal waste combustor metals, municipal waste combustor acid gases, and municipal solid waste landfill emissions) nor provides a default significance threshold of zero. Therefore, Vermont’s regulation fails to require application of best available control technology for emissions of these pollutants at any level—even at major source levels. See Section 5–502(3)(a)(i)–(ii) (applying control technology requirement only to emissions that are “significant”).

Despite this flaw, EPA is nonetheless proposing approval of Vermont’s SIP revision. The revised definition adds a significance threshold for “greenhouse gases,” which does not exist in the currently approved SIP, and the lack of significance thresholds for particulate matter 2.5 microns or less in diameter, municipal waste combustor organics, municipal waste combustor metals, municipal waste combustor acid gases, and municipal solid waste landfill emissions is a continuation from the currently approved SIP, not a new flaw. For that reason, EPA is proposing to approve Vermont’s SIP revision as “SIP strengthening.”

Several lesser issues require discussion regarding EPA’s proposed interpretation of the Vermont regulation. First, Vermont defines “greenhouse gases” in Section 5–101 as “carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other chemical or physical substance emitted into the air that the Secretary may reasonably anticipate to cause or contribute to climate change.” This definition does not explicitly state whether “greenhouse gases” is an aggregate pollutant consisting of six (or more) components, cf. 40 CFR 51.166(b)(48)(i), or six (or more) individual gases. However, elsewhere in Vermont’s regulations, “greenhouse gases” is referred to in a manner suggesting the aggregate interpretation. See, e.g., Section 5–101 (definition of “Major Stationary Source”) (referring to “the air contaminant that is greenhouse gases”). Therefore, EPA proposes to interpret the definition of “greenhouse gases” in Section 5–101 as an aggregate pollutant.

Second, Vermont incorporates by reference EPA’s definition of “subject to regulation” at 40 CFR 51.166(b)(48).¹² This definition provides that the pollutant “greenhouse gases” is subject to regulation if “both a significant emissions increase (as calculated using the procedures in (a)(7)(iv) of this section) and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section) occur.” 40 CFR 51.166(b)(48)(iii). This, in turn, incorporates two different elements of the federal PSD regulation: emissions increase calculation, and emissions increase netting. For non-greenhouse gas pollutants, Vermont uses a different emissions increase calculation methodology, and does not allow for netting. However, EPA understands that Vermont intends for its greenhouse gas permitting requirements to match the federal requirements, and consequently EPA is proposing to interpret Vermont’s definition of “subject to regulation” as including the calculation methodology specified in the federal regulations. See also VT DEC’s Jan. 3, 2011 response to comments; response No. 2 (emphasizing VT DEC’s “intent to have the same (and not more stringent) permitting thresholds for greenhouse gases in Vermont as required by federal regulations”), and response No. 8 (“The [VT DEC] intends for the federal netting

and baseline calculation procedures to apply for applicability of permitting greenhouse gases.”). Thus, for example, an existing Vermont source, in determining whether a proposed modification’s greenhouse gas emissions would be “subject to regulation,” would be permitted to use the actual-to-projected-actual applicability test of 40 CFR 51.166(a)(7)(iv)(c), and to incorporate creditable and contemporaneous reductions in actual emissions in calculating the “net emissions increase.”

Third, in light of the preceding two proposed interpretations, it is possible that an ambiguity may arise if Vermont adds a new component gas to its state-defined “greenhouse gases” pollutant but that component gas is not part of the federal “greenhouse gases” definition at 40 CFR 51.166(b)(48)(i). In this situation, it may not be clear in any given context whether “greenhouse gases” in Vermont’s regulations refers to “greenhouse gases” as defined by EPA or as defined by Vermont. This could be relevant if, for example, an existing source sought to take credit for reductions in a state-only gas when calculating its net emissions increase of greenhouse gases. Since Vermont’s definition of “subject to regulation” in Section 5–101 includes all of 40 CFR 51.166(b)(48), it must therefore include the federal definition of “greenhouse gases” at 40 CFR 51.166(b)(48)(i). Therefore, EPA proposes to interpret “greenhouse gases” in Vermont’s regulations as meaning greenhouse gases as defined by 40 CFR 51.166(b)(48)(i) for purposes of the “subject to regulation” definition and any reference elsewhere in Vermont’s regulations that specifically references the “subject to regulation” definition, but as meaning greenhouse gases as defined by Section 5–101 for all other purposes in Vermont’s SIP.

Finally, as noted above, the Vermont regulation in several places incorporates federal regulations by reference. See, e.g., Section 5–101 (definition of “Major Stationary Source”) (referring to “the thresholds in 40 CFR 51.166(b)(1)(i)”). However, these references do not specify whether the incorporation by reference is intended to be prospective (i.e., to incorporate the federal regulation as it may be amended from time to time, without need for revising the state regulation to accommodate federal regulatory revisions) or fixed. We propose to interpret each incorporation by reference of a federal regulation as referring to the date of adoption of the Vermont regulation, *i.e.*, January 24, 2011.

¹² The Vermont regulation actually refers to “40 CFR 51.166(48)(b)” [sic]. See Section 5–101 (definition of “Subject to Regulation”). We assume this is a clerical error and was intended to refer to § 51.166(b)(48).

B. Other Revisions Adopted by Vermont

Vermont submitted other amendments to its SIP which EPA is not acting on at this time. These amendments include Sections 5–101 (changes to the definitions of Emergency use engine, Federal Land Manager, and Public Notice), 5–251 (NO_x limits), 5–252 (SO₂ limits), 5–401(1–15, 17, and 18) (Classification of Air Contaminant Sources), 5–402 (Written Reports When Requested), 5–404 (Methods of Sampling and Testing of Sources), 5–406 (Required Air Modeling), 5–501 (Review of Construction or Modification of Air Contaminant Sources), and 5–502 (Major Stationary Sources and Major Modifications).

IV. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve Vermont's February 14, 2011 SIP revision, relating to PSD requirements for GHG-emitting sources. Specifically, Vermont's February 14, 2011 SIP revision 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.

If EPA does approve Vermont's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into Vermont's SIP, then Section 52.2372(b) of 40 CFR part 52, as included in EPA's SIP Narrowing Rule—which codifies EPA's limiting its approval of Vermont's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the

Tailoring Rule thresholds—is no longer necessary. In today's proposed action, EPA is also proposing to amend Section 52.2372(b) of 40 CFR part 52 to remove this unnecessary regulatory language.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this proposed 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 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 Clean Air Act; 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: August 2, 2012.

H. Curtis Spalding,

Regional Administrator, EPA New England.

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