which no changes are proposed in the Part 98 amendment proposal.

II. Statutory and Executive Order Reviews

The statutory and executive order reviews do not apply to this notice because this notice does not propose any regulatory changes. For a complete discussion of the statutory and executive order reviews as they apply to the proposed amendments to 40 CFR part 2, *see* the notice "Proposed Confidentiality Determinations for Data Required under the Mandatory Greenhouse Gas Reporting Rule and Proposed Amendment to Special Rules Governing Certain Information Obtained under the Clean Air Act" (75 FR 39094).

List of Subjects 40 CFR Part 2

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

Dated: July 20, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–18229 Filed 7–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2010–0321, FRL–9180–5]

Approval and Promulgation of Implementation Plans; New York Prevention of Significant Deterioration of Air Quality and Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the New York State Implementation Plan (SIP) submitted by the New York State Department of Environmental Conservation on March 3, 2009. The proposed revisions would create a new New York State Prevention of Significant Deterioration of Air Quality (PSD) regulations program and modify the existing New York State Nonattainment New Source Review (NNSR) regulations in the SIP. These proposed revisions also address changes mandated by the revised Federal New Source Review (NSR) regulations, referred to as the "2002 NSR Reform Rules." EPA's 2002 NSR Reform Rules, proposed by New York State for inclusion in the New York SIP with some changes, include provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits, and recordkeeping and reporting requirements. If EPA finalizes approval of New York's regulations, New York will implement its own PSD and NNSR State regulations. EPA notes that, in this proposal, no action is being taken on certain items of New York's revisions that relate to the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule ("Tailoring Rule").

DATES: Comments must be received on or before August 26, 2010.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2010–0321, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *Werner.Raymond@epa.gov*.
- *Fax:* 212–637–3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. 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 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2010–0321. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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 docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frank Jon, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4085; e-mail address: *jon.frank@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, references to "EPA," "we," "us," or "our," are intended to mean the Environmental Protection Agency. The supplementary information is arranged as follows:

I. What is being addressed in this document?
II. What is the background for this action?
III. What is EPA's analysis of New York's NSR rule revisions?
IV. What action is EPA proposing to take?
V. Statutory and Executive Order Reviews

I. What is being addressed in this document?

On March 3, 2009, the State of New York, through the New York State Department of Environmental Conservation (NYSDEC), submitted to EPA Region 2 revisions to the New York

State Implementation Plan (SIP). The submittal consists of revisions to three regulations that are already part of the New York SIP. The affected regulations are: 6 New York Code of Rules and Regulations (NYCRR) Part 231, New Source Review for New and Modified Facilities; 6 NYCRR Part 200, General Provisions; and 6 NYCRR Part 201, Permits and Certificates. The revisions were made to create a new New York State PSD regulation program and to update the existing New York State nonattainment regulations consistent with changes to the Federal NSR regulations published on December 31, 2002 (67 FR 80186). In today's action, EPA is proposing to approve those revisions with the caveat that EPA is not proposing action at this time on (1) the PSD permitting threshold provisions to the extent that those provisions require permits for sources of greenhouse gas (GHG) emissions that equal or exceed the 100/250 tons per year (tpy) GHG levels but are less than the thresholds identified in EPA's final Tailoring Rule at 75 FR 31514, 31606 (June 3, 2010); and (2) the PSD significance level provisions of New York's rule to the extent that those provisions treat as significant GHG emissions increases that are less than the thresholds identified in the final Tailoring Rule. *Id.* In accordance with the final Tailoring Rule, New York is expected to submit a letter to EPA addressing these issues shortly. *Id.* After receiving New York's letter, EPA will take action with respect to these additional items. Today's proposed approval with respect to GHG emissions above the Tailoring Rule thresholds is premised on our understanding that the New York State PSD regulations provide authority to regulate GHG emissions within EPA's meaning of the term "subject to regulation." *See* 75 FR 31582. This understanding is based upon EPA's review of New York's definition of "Regulated NSR Contaminant," which includes any contaminant that is "subject to regulation" under the Clean Air Act. 6 NYCRR § 231–4.1(43). New York is also expected to address its authority to regulate GHG emissions in its letter. In the event that New York articulates the view that it does not have authority to regulate greenhouse gases, EPA will revisit this issue before taking final action.

II. What is the background for this action?

On December 31, 2002, EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the Clean Air Act's PSD and Nonattainment New Source Review (NNSR) programs. 67 FR 80186. Available at *http://www.epa.gov/nsr/fr/20021231_80186.pdf*. On November 7, 2003, EPA published a final action on the reconsideration of the December 31, 2002 final rule changes. 68 FR 63021. In that November 7th final action, EPA added the definition of "replacement unit," and clarified an issue regarding plantwide applicability limitations (PALs). On June 13, 2007, EPA revised the rules to remove provisions for pollution control projects and clean units. 72 FR 32526. EPA further revised the rules on December 21, 2007, to clarify when facilities must keep records and report emissions when a "reasonable possibility" test shows that projected emissions increases could equal or exceed 50% of the Clean Air Act's NSR significant levels for a regulated NSR pollutant. 72 FR 72607. Collectively, these four final actions are referred to as the "2002 NSR Reform Rules." The 2002 NSR Reform Rules are part of EPA's implementation of parts C and D of title I of the Clean Air Act (CAA), 42 U.S.C. 7470–7515. Part C of title I of the CAA, 42 U.S.C. 7470–7492, is the PSD program, which applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—"attainment" areas—as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS—"unclassifiable" areas. Part D of title I of the CAA, 42 U.S.C. 7501–7515, is the NNSR program, which applies in areas that are not in attainment of the National Ambient Air Quality Standards (NAAQS)—"nonattainment areas." Collectively, the PSD and NNSR programs are referred to as the "New Source Review" or "NSR programs". EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, Appendix S. The CAA's NSR programs are preconstruction permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA.

The NSR programs include a combination of air quality planning and air pollution control technology requirements. Briefly, section 109 of the CAA, 42 U.S.C. 7409, requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, States must develop, adopt, and submit to EPA for approval, a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to: (1) Assure that the NAAQS are achieved and maintained; (2) protect areas of clean air; (3) protect air quality related values (such as visibility) in national parks and other areas; (4) assure that appropriate emissions controls are applied; (5) maximize opportunities for economic development consistent with the preservation of clean air resources; and (6) ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decision.

The 2002 NSR Reform Rules made changes to four areas of the NSR programs. In summary, the 2002 Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plant-wide applicability limits (PALs) to avoid having a significant emissions increase that triggers the requirements of the major NSR program; and (4) require new recordkeeping and reporting. On November 7, 2003, EPA published a final action on its reconsideration of the 2002 NSR Reform Rules (68 FR 63021), which added a definition for "replacement unit" and clarified an issue regarding PALs. After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), various petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 5276, August 7, 1980). On June 24, 2005, the DC Circuit Court issued a decision on the challenges to the 2002 NSR Reform Rules. *New York* v. *United States,* 413 F.3d 3 (DC Cir. 2005). In summary, the DC Circuit Court vacated portions of the Rules pertaining to clean units and pollution control projects, remanded a portion of the Rules regarding recordkeeping, *e.g.,* 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007, EPA revised the Rules to remove provisions for pollution control projects and clean units. On December 21, 2007, EPA took final action regarding the remanded portion on recordkeeping by promulgating the reasonable possibility in recordkeeping rule. Today's action is consistent with the decision of the DC Circuit Court because New York's submittal does not include any portions of the 2002 NSR Reform Rules that were vacated as part

of the DC Circuit Court's June 2005 decision.

The 2002 NSR Reform Rules require that State agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. (Consistent with changes to 40 CFR 51.166(a)(6)(i), State agencies are now required to adopt and submit SIP revisions within three years after new amendments are published in the **Federal Register**.) State agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations. However, if a State decides not to implement any of the new applicability provisions, that State is required to demonstrate that its existing program is at least as stringent as the Federal program. On March 3, 2009, the State of New York submitted a SIP revision for the purpose of revising the State's NSR permitting provisions. These changes were made primarily to adopt EPA's 2002 NSR Reform Rules with a few modifications. As discussed in further detail below, EPA believes the revisions contained in the New York submittal are approvable for inclusion into the New York SIP, with the caveat that we are taking no action on the specific items identified in Section I of this proposal related to the Tailoring Rule thresholds.

III. What is EPA's analysis of New York's NSR rule revisions?

New York currently has an approved NNSR program for new and modified sources. Today, EPA is proposing to approve revisions to New York's existing NNSR program and a new PSD program. These proposed revisions became State effective on March 5, 2009, and were submitted to EPA on March 3, 2009. Copies of the revised rules, as well as the State's Regulatory Impact Statement (RIS), can be obtained from the Docket, as discussed in the "Docket" section above. In general, the New York State revisions to the rule are similar to the Federal NSR Reform Rules except for a few specific provisions. A discussion of the specific changes to New York's rule, proposed for inclusion in the SIP, that are different from the EPA rules are as follows.

A. Definition for Baseline Period

Under the major NSR program, an existing major facility may modify, or even completely replace, or add, emissions units without obtaining a major NSR permit, so long as the "projected actual emissions" do not increase by a significant amount over the levels emitted during the "baseline period" at the plant as a whole.

The revised New York regulations in 6 NYCRR Part 231 establish a uniform period provision for electric utility steam generating units (EUSGUs) and non-EUSGUs. The revised Part 231 requires that all emissions sources select a baseline period using the annual average of any twenty-four (24) consecutive month period within the five (5) year period that precedes a proposed change. Sources are not allowed to go beyond this time period.

Under the Federal NSR rule, EUSGUs must select a baseline period using any 24-consecutive month period within the 5-year period immediately preceding the actual construction or another 24-consecutive month period that is demonstrated to be more representative. For non-EUSGUs, they must take the average of annual emissions of any 24-consecutive months within the 10-year period that precedes the proposed change. By allowing a longer period for selecting the 24-month average, sources are more likely to find a period of time with high emissions that will result in an increase below significance levels. Though EPA believes that the Federal rule allowing a 10-year look-back for defining the baseline period for non-EUSGUs retains the environmental benefits of the NSR program,[1] the revised Part 231 definition of Baseline Period is more restrictive than the Federal definition for non-EUSGUs because the Federal definition allows only a 5-year look-back period.

B. Single Baseline for Facilities Undergoing NSR Modifications

The revised Part 231 requires that facilities select a single baseline period for all regulated NSR pollutants when calculating baseline actual emissions.

Under the Federal NSR rule, facilities are allowed to choose a different baseline period within the look-back period for each NSR pollutant. This allows sources to pick and choose the baseline period, for each pollutant, most likely to result in an increase below significance levels. New York's approach would not allow for this flexibility, and would increase the likelihood of requiring NSR review for more regulated NSR pollutants. So, this State requirement is more stringent than the Federal requirement.

[1] EPA's environmental impact analysis of the 10-year look-back provision was provided at the time of the 2002 NSR Reform rule in EPA's "Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules" and is available at *http://www.epa.gov/nsr/actions.html#2002.*

C. Plantwide Applicability Limits (PALs)

A PAL is a voluntary option that provides a facility with the ability to manage facility-wide emissions without triggering major NSR review. If a facility keeps the emissions below a plantwide actual emissions cap (that is, an actual PAL), then these regulations allow the facility to avoid the major NSR permitting process when the facility makes alterations to the plant or individual emissions units. In return for this flexibility, the facility must monitor and comply with more stringent requirements for all of the emissions units under the PAL.

The revised Part 231 allows facilities to establish a PAL for an initial term not to exceed 10 years. However, the rule aligns the PAL term with the facility's title V permit so that they both expire at the same time. This will allow the PAL to be renewed with the title V facility under the same administrative and permit review process and will result in PAL renewals earlier than under the Federal rule.

The revised Part 231 also requires a reduction in the PAL of up to 25% or implementation of best available control technology (BACT), whichever is less stringent, by the end of the fifth year of the initial PAL. The earlier PAL renewals and PAL reduction programs under New York's revised Part 231 are more stringent than the Federal rules.

D. The Facility Need Not Be Major for the Specific Nonattainment Pollutant in Order for the Specific Nonattainment Significant Threshold To Apply

New York's revised Part 231 does not require that the facility be an existing major source for the applicable nonattainment pollutant before looking at the specific nonattainment significant threshold for applicability purposes. In other words, a facility only needs to be a major source for one nonattainment pollutant, for example, ozone, for all other nonattainment significant thresholds to apply for applicability purposes. The revised Part 231 for nonattainment areas follows the same applicability procedures as the PSD rules, *i.e.,* the facility only needs to be an existing major stationary source for an attainment pollutant and then all the significant thresholds will apply for applicability purposes. This is more stringent than the Federal requirements in nonattainment areas which indicate that the existing facility must be a major stationary source for that specific nonattainment pollutant before the applicable significant nonattainment pollutant threshold is applied.

E. Reasonable Possibility in Recordkeeping

Revised Part 231 expands upon the requirements of EPA's December 21, 2007 final Reasonable Possibility in Recordkeeping rule by incorporating recordkeeping and/or monitoring requirements for all insignificant modifications. For example, any modification with a "project emission potential" (a term equivalent to EPA's projected actual emissions increase) which is less than 50% of the applicable significant project threshold, or any modification with a project emission potential which, when emissions from independent and unrelated factors such as demand growth are added, is less than 50% of the applicable significant project threshold, must maintain for a minimum of 5 years: (1) A description of the modification; (2) An identification of each new or modified emission sources(s) including the associated processes, and emission units; (3) the calculation of the projected emission potential for each modified emission source(s) including supporting documentation; and (4) the date the modification commenced operation.

The revised Part 231 also extends the pre-construction notification requirement (must submit an application to the NYSDEC) to any facility that proposes a modification with a project emission potential which equals or exceeds 50% of the applicable significant project threshold or proposes a modification with a project emission potential which is less than 50% of the applicable significant project threshold, but equals or exceeds 50% of the applicable significant project threshold when emissions from independent and unrelated factors such as demand growth are added.

For the post-change monitoring requirements, the facilities must keep records of their calculations of emission increases from independent and unrelated factors such as demand growth, monitor post-modification emissions, and submit annual reports to verify the accuracy of their calculations.

Under the Federal NSR rule, provisions for recordkeeping are applicable to: (1) Modifications with a projected actual emissions increase that equals or exceeds 50% of the applicable NSR significant threshold, and (2) modifications with a projected actual emissions increase that is less than 50% of the applicable NSR significance threshold but when emissions attributable to independent and unrelated factors such as demand growth are added, equals or exceeds 50% of the applicable NSR significance threshold. For (1) above, EPA requires emission sources to comply with both pre-change and post-change recordkeeping and reporting requirements. For (2) above, EPA requires only pre-change recordkeeping requirements.

Also, the final Federal Reasonable Possibility Rule only requires EUSGUs to notify the permitting authority, prior to beginning actual construction, for any modification with a project emission potential which equals or exceeds 50% of the applicable significant project threshold. Therefore, the revised Part 231 is more restrictive than the Federal requirements.

Except as described above, the State Part 231 rules are substantively the same as the existing PSD and nonattainment Federal rules.

F. Prevention of Significant Deterioration of Air Quality: 6 NYCRR Part 231

The State rule does not incorporate the portions of the Federal rules that were vacated by the DC Circuit Court, specifically, the clean unit provisions and the pollution control projects exclusion. Except for the items described above in Sections A through E, the revisions included in New York's PSD program are substantively the same and, in some instances (as discussed above), more stringent than the corresponding Federal provisions.

As part of its review of the New York SIP submittal, EPA performed a review of the proposed revisions and has determined that they are consistent with the program requirements for the preparation, adoption and submittal of implementation plans for the Prevention of Significant Deterioration of Air Quality, set forth at 40 CFR 51.166, including the 2002 NSR Reform Rules.

G. Review of New Sources in Nonattainment Areas: 6 NYCRR Part 231

New York's permitting requirements for major sources in nonattainment areas are set forth at 6 NYCRR Part 231. The New York nonattainment NSR program was originally approved into the New York SIP on July 1, 1980 and applies to the construction and modification of any major stationary source of air pollution in a nonattainment area, as required by part D of title I of the CAA. To receive approval to construct, a source that is subject to this regulation must show that it will not cause a net increase in pollution with more than 1:1 offset ratio, will not create a delay in meeting the NAAQS, and will install and use control technology that achieves the LAER. The revisions to this regulation, which EPA is proposing to approve into the SIP, update the existing provisions to be consistent with the current Federal nonattainment rule in 40 CFR 51.165, including the 2002 NSR Reform Rules. These revisions address baseline actual emissions, actual-to-projected-actual applicability tests, and PALs.

The State rule does not incorporate the portions of the Federal rules that were vacated by the DC Circuit Court, specifically, the clean unit provisions and the pollution control projects exclusion. Except for the items described above in Sections A through E, the revisions included in New York's nonattainment NSR program are substantively the same as the 2002 NSR Reform Rules. As part of its review of the New York submittal, EPA performed a review of the proposed revisions and has determined that they are consistent with the program requirements for the preparation, adoption and submittal of implementation plans for New Source Review, set forth at 40 CFR 51.165, including the 2002 NSR Reform Rules.

We note that New York State is required to submit a SIP revision to EPA as a result of the Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$) which was published in the **Federal Register** on May 16, 2008. 73 FR 28321. This rule requires the States to adopt and submit plan revisions to their attainment and nonattainment NSR SIP that incorporate a number of requirements pertaining to $PM_{2.5}$ within 3 years from the date EPA publishes the changes in the **Federal Register**. Consequently, New York State has until May 16, 2011 to submit the required $PM_{2.5}$ changes to EPA.

H. Technical Error and Other Issues

There is a technical error in the revised Part 231. New York must address this technical error by adding the underlined words "*equal or*" as shown below. However, EPA is proposing to approve this regulation into the SIP with the interpretation listed below for this particular definition. Our interpretation, that the language should read as "equal or exceed," is consistent with other sections of Part 231 which do use the term "equal or exceed" when dealing with applicable significant project threshold of a regulated NSR contaminant and manifest New York's intention to apply the language in the Federal rules.

From "Definitions" under 6 NYCRR Part 231–4.1(b)(31):

(31) NSR major modification. Any modification of a major facility that would

equal or exceed the applicable significant project threshold of a regulated NSR contaminant in Table 3, Table 4, or Table 6 of Subpart 231–13 of this Part; and would result in a significant net emissions increase of that contaminant from the major facility.

(i) Any modification with a project emission potential for VOC or NO_X that *equals or* exceeds the applicable significant project threshold or any net emissions increase at a major facility that is significant for VOC or NO_X shall be considered significant for ozone.

With respect to the creation of Emission Reduction Credits (ERCs), the revised 6 NYCRR Part 231 states that for NO_X, PM_{10} or VOC emissions, ERCs must have physically occurred on or after November 15, 1990 but need not be contemporaneous. This November 15, 1990 date is much earlier than the emission inventory base year that New York State uses for planning purposes which is the year 2002. EPA regulations require a State to include ERCs created in the years prior to the emission inventory base year in the future year attainment inventories. ERCs created between November 15, 1990 and 2002 have been properly accounted for in the future year (projection) attainment inventories that are used to account for the reasonable further progress requirements. Therefore, EPA deems that the ERC meets the specific requirements from shutdowns and curtailments contained in 40 CFR part 51, Appendix S, section IV.C.3.

With respect to the creation of ERCs for $PM_{2.5}$, 6 NYCRR Part 231 states that the ERCs must have physically occurred on or after April 5, 2005 but need not be contemporaneous. The year for the last New York State $PM_{2.5}$ emission inventory is 2002. The April 5, 2005 date is more stringent than the Federal requirement of using the emission inventory base year of 2002. Therefore, EPA is proposing to approve the provision with the April 5, 2005 date.

I. Revisions to 6 NYCRR Part 200, "*General Provisions*" *and 6 NYCRR Part 201,* "*Permits and Certificates*"

New York also made administrative changes to Parts 200 and 201 which reflect implementation of the Part 231 provisions. The Part 200 amendments, specifically Subdivision 200.1(bl) was amended to clarify that for emergency power generating stationary internal combustion engines, the potential to emit will be based on a maximum of 500 hours of operation per year per engine unless a more restrictive limitation exists in a permit or registration. A new subdivision 200.1(cl) was added to indicate that routine maintenance determinations are made on a case-by-case basis, taking into account the nature and extent of the activity and its frequency and cost. Section 200.9 was amended to include all Federal materials referenced in the proposed amendments to Part 231. Section 200.10(a) was amended to reflect that the NYSDEC is no longer delegated responsibility for implementation of the Federal Prevention of Significant Deterioration (PSD) Program.

New York's amendments to Part 201 revise the definition for "major stationary source or major source or major facility" at 6 NYCRR 201–2.1(b)(21). The definition will now encompass the term "major facility" and incorporate major facility and significant project thresholds for facilities emitting particulate matter or particles with an aerodynamic diameter less than or equal to a nominal 2.5 micro-meters ($PM_{2.5}$). EPA designated the New York City metropolitan area as nonattainment for the $PM_{2.5}$ standard (70 FR 944). NNSR review is now required for new major facilities and major modifications to existing facilities that emit $PM_{2.5}$ in significant amounts in the $PM_{2.5}$ nonattainment area.

Since the revisions to Parts 200 and 201, including the new or revised definitions are consistent with Federal guidance, EPA is proposing to approve them into the New York SIP. It is important to note that EPA is proposing to approve only those revisions made to Part 200, specifically subparts 200.1, 200.6, 200.7, and 200.9, as effective March 5, 2009, consistent with what has been previously approved into the Federally enforceable New York SIP. EPA is also proposing to approve those revisions to Part 201, specifically subpart 201–2, effective March 5, 2009, as it applies to the implementation of the Part 231 NSR permitting program. EPA is not proposing action on the revisions to section 200.10 since they are references to Federal standards and requirements and are therefore already Federally enforceable standards and requirements.

J. Clean Air Act (CAA) Section 110(l)

Section 110(l) of the CAA provides that "the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of this Act."

Approval of New York's Revised Part 231 into the SIP would not violate CAA section 110(l) with respect to either PSD or nonattainment NSR.

1. PSD

With respect to PSD, EPA determines that approval of New York's regulations will not "interfere with * * * attainment or any other applicable requirement" of the statute. New York has never had a PSD SIP. As a result, the regulations currently in place in New York State are the Federal NSR Reform regulations. New York's proposed SIP for PSD is no less stringent than the Federal program, and is in fact more stringent than the Federal program in a number of ways as discussed above in this proposal. Thus, approval of New York's PSD regulations into the SIP will not interfere with any applicable requirement of the CAA.

2. Nonattainment NSR (NNSR)

EPA likewise determines that approval of New York's proposed NNSR SIP also would not interfere with attainment, reasonable further progress or any other applicable requirement of the CAA. New York's NNSR SIP approval dates back to July 1, 1980, well before the 1990 Clean Air Act Amendments. Since then, there have been many improvements in part D of the CAA, and these have been incorporated into New York's revised Part 231. Thus, approval of New York's new NNSR regulation into the SIP will add provisions that will support attainment or reasonable further progress. For example, the current NNSR SIP does not contain up-to-date offset ratios for VOCs and NO_X inasmuch as it predates the ozone transport region, and contains a threshold of 50 tons/year throughout the State for VOCs and NO_X. New York's revised Part 231 addresses these weaknesses. Furthermore, New York's reasonable further progress (RFP) demonstration does not rely on this NSR rule but on other regulations, such as Reasonably Available Control Technology (RACT).

K. Clean Air Act (CAA) Section 193

Section 193 of the CAA specifically provides that "no control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emissions reductions of such air pollutant."

As discussed in the preceding section, New York's PSD and NNSR SIP provisions are more stringent than the applicable Federal regulations and the existing NSR SIP approved on July 1,

1980. Because the proposed SIP revision will result in equivalent or greater emission reductions, the proposed SIP revision is consistent with the requirements of section 193 of the CAA.

IV. What action is EPA proposing to take?

EPA is proposing to approve revisions to the New York SIP 6 NYCRR Part 200, 6 NYCRR Part 201 and 6 NYCRR Part 231 which became effective under NYS law on March 5, 2009, and was submitted by the State of New York to EPA on March 3, 2009. Specifically, EPA is proposing to approve subparts 200.1, 200.6, 200.7, and 220.9, as effective March 5, 2009, and subpart 201–2, as effective March 5, 2009, with the caveat that EPA is taking no action on the specific items identified in Section I of this proposal related to the Tailoring Rule thresholds. EPA will take action on these additional items after receiving New York's letter, expected shortly.

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 CAA 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 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 (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, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: July 16, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2010–18365 Filed 7–26–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–1061; MB Docket No. 10–117; RM–11601]

FM TABLE OF ALLOTMENTS, GRANTS PASS, OREGON

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments. The Commission requests comment on a petition filed by Three Rivers Broadcasting, LLC proposing the allotment of FM Channel 257A as the second commercial allotment at Grants Pass, Oregon. The channel can be allotted at Grants Pass in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.7 km (5.4 miles) west of Grants Pass, at 42–25–25 North Latitude and 123–26–25 West Longitude. *See* Supplementary Information infra.

DATES: The deadline for filing comments is August 26, 2010. Reply comments must be filed on or before September 10, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. In addition to filing comments with the FCC interested parties should serve the petitioner, as follows: Casey McIntosh, Three Rivers Broadcasting, LLC, 2970 Ravenwood Drive, Grants Pass, Oregon 97527

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 10–117, adopted June 10, 2010, and released June 14, 2010. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, S.W., Washington, D.C. 20554.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, http://www.bcpiweb.com.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 does not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.