

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 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; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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. A new temporary § 165.T08–082 is added to read as follows:

§ 165.T08–082 Safety Zone; Upper Mississippi River, Mile Marker 51.5 to 52.5, Cape Girardeau, MO.

(a) *Location.* The following area is a safety zone: all waters of the Upper Mississippi River from mile marker 51.5 to 52.5, extending the entire width of the river.

(b) *Effective date.* This rule is effective from 8 a.m. on July 13, 2003 until 5 p.m. on August 15, 2003.

(c) *Enforcement period.* This section will be enforced from 8 a.m. through 5 p.m. up to 3 days a week from July 13, 2003 through August 15, 2003. The Captain of the Port Paducah will inform mariners of enforcement periods by a broadcast notice to mariners.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Paducah.

(2) Persons or vessels requiring entry into or passage through must request permission from the Captain of the Port Paducah, or a designated representative. They may be contacted on VHF Channel 13 or 16, or by telephone at (270) 442–1621 ext 350.

(3) All persons and vessels shall comply with the instructions of the

Captain of the Port Paducah and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: July 13, 2003.

R.C. Johnson,

Commander, Coast Guard, Captain of the Port Paducah.

[FR Doc. 03–19405 Filed 7–29–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[Docket No. A–90–37; FRL –7538–1, E–Docket ID No. A–2001–0004 (Legacy Docket ID No. A–90–37)]

Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reconsideration of final rule; request for public comment; notice of public hearing.

SUMMARY: On December 31, 2002 and March 10, 2003, EPA revised regulations governing the major New Source Review (NSR) programs mandated by parts C and D of title I of the Clean Air Act (CAA or Act). Following these actions, the Administrator received a number of petitions for reconsideration. Today, the EPA is announcing our reconsideration of certain issues arising from the final rules of December 31, 2002. We (the EPA) are requesting public comment on six issues for which we are granting reconsideration. The issues are described in section IV of the **SUPPLEMENTARY INFORMATION** section of this preamble. We plan to issue a final decision on these issues and other issues raised in the various petitions by October 28, 2003.

We are only seeking comment on provisions of the major NSR rules as

specifically identified in this notice. We will not respond to any comments addressing any other provisions of the NSR rules or program.

DATES: *Comments.* Comments must be received on or before August 29, 2003.

Public Hearing. The public hearing will convene at 9 a.m. and will end after all registered speakers have had an opportunity to speak but no later than 10 p.m. on August 14, 2003. Because of the need to resolve the issues raised in this notice in a timely manner, EPA will not grant requests for extension beyond this date. For additional information on the public hearing and requesting to speak, see the **SUPPLEMENTARY INFORMATION** section of this preamble.

ADDRESSES: *Comments.* Comments may be submitted by mail to U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC, 20460, Attention E-Docket ID No. OAR–2001–0004 (Legacy Docket ID No. A–90–37). Comments may also be submitted electronically, by facsimile, through hand delivery/courier, or by phone.

Public Hearing. A public hearing will be held at the Sheraton Imperial Hotel & Convention Center, 4700 Emperor Boulevard, Durham, North Carolina 27703, telephone (919) 941–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Hutchinson, Information Transfer and Program Integration Division (C339–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5795, or electronic mail at hutchinson.lynn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Are the Regulated Entities?

Entities potentially affected by the subject rule for today’s action include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups.

Industry group	SIC ^a	NAICS ^b
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122
Petroleum Refining	291	324110
Industrial Inorganic Chemicals	281	325181, 325120, 325131, 325182, 211112, 325998, 331311, 325188
Industrial Organic Chemicals	286	325110, 325132, 325192, 325188, 325193, 325120, 325199
Miscellaneous Chemical Products	289	325520, 325920, 325910, 325182, 325510
Natural Gas Liquids	132	211112
Natural Gas Transport	492	486210, 221210
Pulp and Paper Mills	261	322110, 322121, 322122, 322130
Paper Mills	262	322121, 322122
Automobile Manufacturing	371	336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213

Industry group	SIC ^a	NAICS ^b
Pharmaceuticals	283	325411, 325412, 325413, 325414

^a Standard Industrial Classification.

^b North American Industry Classification System.

Entities potentially affected by the subject rule for today's action also include State, local, and tribal governments that are delegated authority to implement these regulations.

B. How can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under E-Docket ID No. OAR-2001-0004 (Legacy Docket ID No. A-90-37). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC, 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1742. A reasonable fee may be charged for copying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of a portion of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. Interested persons may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket,

will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, through hand delivery/courier, or by phone. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

a. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in either Docket

ID No. A-90-37 or E-Docket ID No. OAR-2001-0004 (for which A-90-37 is now a legacy number). The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

b. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epamail.epa.gov*, Attention E-Docket ID No. OAR-2001-0004 (Legacy Docket ID No. A-90-37). In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

c. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send two copies of your comments to: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC, 20460, Attention E-Docket ID No. OAR-2001-0004 (Legacy Docket ID No. A-90-37).

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC, 20460, Attention Docket ID No. A-90-37. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

4. *By Facsimile.* Fax your comments to the EPA Docket Center at (202) 566-1741, Attention Docket ID No. A-2001-0004 (Legacy Docket ID No. A-90-37).

5. *By Phone.* You may call and leave oral comments on a public comment phone line. The number is (919) 541-0211. EPA will log and place in E-Docket ID No. OAR-2001-0004 (Legacy Docket ID No. A-90-37) any comments received through this phone number.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket

or by e-mail. Send or deliver information identified as CBI only to the following address: Mr. David Svendsgaard, c/o OAQPS Document Control Officer (C339-03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Attention E-Docket ID No. OAR-2001-0004 (Legacy Docket ID No. A-90-37). You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. (If you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI.) Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments.

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide any technical information and/or data you used that support your views.
- If you estimate potential burden or costs, explain how you arrived at your estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternatives.
- Make sure to submit your comments by the comment period deadline identified.
- To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

F. What Information Should I Know About the Public Hearing?

The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the issues raised in this notice. Person interested in attending or presenting oral testimony are encouraged to register in advance by contacting Ms. Chandra Kennedy, OAQPS, Integrated Implementation Group, Information Transfer and Program Integration Division (C339-03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number (919) 541-5319 or e-mail *kennedy.chandra@epa.gov* no later than August 11, 2003. Presentations will be limited to 5 minutes each. We will assign speaking times to speakers who make a timely request to speak at the hearing. We will notify speakers of their assigned times by August 13, 2003. We will attempt to accommodate all other persons who wish to speak, as time allows.

The EPA's planned seating arrangement for the hearing is theater style, with seating available on a first come first served basis for about 250 people. Attendees should note that the use of pickets or other signs will not be allowed on hotel property.

As of the date of this announcement, the Agency intends to proceed with the hearing as announced; however, unforeseen circumstances may result in a postponement. Therefore, members of the public who plan to attend the hearing are advised to contact Ms. Chandra Kennedy at the above referenced address to confirm the location and date of the hearing. You may also check our New Source Review Web site at <http://www.epa.gov/nsr> for any changes in the date or location.

The record for this action will remain open until September 15, 2003 to accommodate submittal of information related to the public hearing.

G. Where Can I Obtain Additional Information?

In addition to being available in the docket, an electronic copy of today's notice is also available on the World Wide Web through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of today's notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

H. How Is This Preamble Organized?

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II. Background

In the early 1990's, the Environmental Protection Agency ("we" or "the Agency") began an effort to revise the

major NSR regulations to respond to concerns expressed by regulated industry and State and local permitting authorities that the major NSR regulations were too complex and burdensome. This effort involved the solicitation of ideas and recommendations from the Clean Air Act Advisory Committee and the public. The goal of this effort, known as NSR Reform (or NSR Improvement), was to eliminate as much of the program complexity, administrative burden and resultant project delays as possible without sacrificing the current level of environmental protection and benefits derived from the program.

On July 23, 1996 (61 FR 38250), we proposed changes to various aspects of the NSR program based primarily on consideration of recommendations provided through the NSR Reform effort, but also based on our own independent initiatives to further clarify the major NSR program. The proposed changes addressed baseline emission determinations, actual-to-future-actual emissions measurement methodology, Plantwide Applicability Limitations (PALs), Clean Units, and Pollution Control Projects (PCPs), as well as other changes.

Following the 1996 proposal, we held two public hearings and more than 50 stakeholder meetings. Environmental groups, industry, and State, local, and Federal agency representatives participated in these many discussions. We received several hundred public comments on the 1996 proposal rule. As a result of comments received and further review of the issues by the Agency, we sought further comment on some issues in the proposed rule. On July 24, 1998, we published a **Federal Register** Notice of Availability (NOA) that requested additional comment on three of the proposed changes—baseline emissions determination, the actual-to-future-actual-methodology, and PALs. We received several hundred public comments on the NOA. Following the NOA, we convened various stakeholder meetings concerning NSR Reform over a number of years. Information on these meetings can be found in Docket ID No. A-90-37.

On December 31, 2002, we issued a final rule (67 FR 80186) that revised regulations governing the major NSR programs (final rules).¹ The revisions included five major changes to the major NSR program that will reduce burden, maximize operating flexibility,

improve environmental quality, provide additional certainty, and promote administrative efficiency. These elements include baseline actual emissions, actual-to-projected-actual emissions methodology, PALs, Clean Units, and PCPs. The final rules also codified our longstanding policy regarding the calculation of baseline emissions for electric utility steam generating units (EUSGUs). In addition, the final action: (1) Responded to comments we received on a proposal to adopt a methodology, developed by the American Chemistry Council (formerly known as the Chemical Manufacturers Association (CMA)) and other industry petitioners, to determine whether a major stationary source has undertaken a major modification based on its potential emissions; and (2) included a new section that spells out in one place how a major modification is determined under the various major NSR applicability options. This topic had previously been addressed primarily in the definition section of the major NSR regulations. We also clarified where to find the provisions in the revised rules and codified a definition of "regulated NSR pollutant" that clarifies which pollutants are regulated under the Act for purposes of major NSR.

On February 28, 2003, we sent notice to affected States that, consistent with our proposal in 1996, we were revising the references to 40 CFR 52.21 in delegated States' plans to reflect the December 31, 2002 changes to the Prevention of Significant Deterioration (PSD) Federal Implementation Plan (FIP) (40 CFR 52.21(a)(2) and (b) through (bb)). This FIP applies in any area that does not have an approved PSD program in the State Implementation Plan (SIP), and in all Indian country. The notice was subsequently published in the **Federal Register** on March 10, 2003 (68 FR 11316).

Following publication of the December 31, 2002 and March 10, 2003 **Federal Register** notices, the Administrator received numerous petitions, filed pursuant to section 307(d)(7)(B) of the CAA, requesting reconsideration of many aspects of the final rules.² The purpose of today's

² Petitions for reconsideration of the December 31, 2002 final rule were filed by: Northeastern States (CT, ME, MD, MA, NH, NJ, NY, PA, RI, VT); South Coast Air Quality Management District (CA); and Environmental Groups (led by NRDC, Earthjustice, Clean Air Task Force, and Environmental Defense). Additional petitions joined existing petitions: The People of California and California Air Resources Board (joined South Coast and Northeastern States petitions); Yolo-Solano Air Quality Management District (CA)

¹ The December 31, 2002 first rules did not act on several issues proposed in 1996. We intend to act on some or all issues from the 1996 proposal in a subsequent **Federal Register** notice.

notice is to initiate a process for responding to several issues raised in these petitions.

III. Today's Action

A. Grant of Reconsideration

At this time, we have decided to grant reconsideration on six issues raised by petitioners.³ The first involves a document we released in November 2002, entitled, "Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules."⁴ This analysis provides the Agency and other interested parties with additional information on the environmental effects of the final rules. The analysis shows that the final rules will result in greater emissions reductions than the former program. Petitioners assert that the final rules are flawed because we did not rely on this document in promulgating the rule and hence that we promulgated the final rule without having adequately evaluated its environmental impacts. In the alternative, they assert that, to the extent we relied on the analysis for that assessment, we did so improperly because we did not make the analysis available for public comment. Petitioners further assert that our analysis does not properly analyze the environmental effects of the rule and did not take into account recent information about the health impacts of air pollution and the effects of the final rule on air pollutant emissions.⁵

We disagree with Petitioners' assertions. During the rulemaking process, we strived to take into consideration relevant and reliable information on environmental effects. We did in fact take account of environmental considerations in formulating the final rules, and believe the final rules are properly supported and justified in this regard. However, we want Petitioners and others to have every opportunity to comment on the work that we have done to date and to provide additional information that they

(joined South Coast petition); Santa Barbara, Ventura, and Monterey Air Pollution Control Districts (CA); and Sacramento Air Quality Management District (CA) (joined South Coast petition). Petitions for reconsideration of the FIP rule were filed by: Delegated States (CA, CT, IL, MA, NJ, NY, DC, South Coast Air Quality Management District (CA), and Santa Barbara Air Pollution Control District (CA)); and Environmental Groups (essentially the same groups that filed petitions to reconsider the December 31, 2002 rule).

³ In this notice, the term "petitioners" refers only to those entities that filed petitions for reconsideration with EPA.

⁴ Available through our NSR website at <http://www.epa.gov/nsr> and in docket ID No. A-90-37, Document IV-A-7.

⁵ See, e.g., Environmental Groups petition at 25; Northeastern States petition at 5, 6.

believe to be relevant to the inquiry. For these reasons, we have chosen to grant the petitions as they relate to these issues. In short, we have no reason to believe our analysis of environmental effectiveness is incorrect or flawed. Nevertheless, we do think the supplemental analysis provides additional support for the final rules, so we are making it available for public comment, and we will reevaluate our conclusions in light of the comments and information submitted.

The remaining issues for which we grant reconsideration involve five narrow aspects of the final rule. For each of the five, Petitioners claim that the final provision did not sufficiently reflect the ideas set forth in the proposed rule and, therefore, that they did not have an adequate opportunity to provide input during the designated public comment period. Without prejudging the information that will be provided in response to this notice, we note that to date Petitioners have not provided information which persuades us that our final decisions are erroneous or inappropriate. While we do not agree with Petitioners' claim, we have decided to grant reconsideration on these issues in an interest of ensuring a full opportunity for comment. Each of these issues is described in detail below.

Our final decision on reconsideration for all the remaining issues in the petitions for reconsideration will be issued no later than the date by which we take final action on the issues for which we have decided to grant reconsideration. We plan to take final action on all issues no later than 90 days after publication of today's notice.

B. Request for Stay of Final Rules

We are not granting a stay of the final rules pending our reconsideration of these issues. Under sections 307(b)(1) and 307(d)(7)(B) of the Act, the effectiveness of the final rules is not automatically postponed by our granting the petitions for reconsideration on certain issues. The Administrator (or the court), however, may stay the rules pending our reconsideration for a period not to exceed three months. 42 U.S.C. 7607(d)(7)(B). Petitioning States and Environmental Groups requested that we exercise our discretion under this section and grant a stay of the final rules during reconsideration.⁶

We do not believe that a stay is warranted. We believe that the final rules are a reasonable exercise of our discretion under the CAA, and will result in greater emission reductions

⁶ See Environmental Groups petition at 1, 145; Northeastern States petition at 47.

compared to the former program.⁷ Moreover, although we have decided to reconsider certain aspects of the final rules, at this time we do not have reason to believe that the substantive decisions reflected in the final rule are erroneous. We are also concerned about the impact of a stay on facilities located in delegated States. The new requirements are currently in effect in these areas. We believe that it would be inappropriate to revert to the former program when it is likely that the current program would be reinstated 60 to 90 days later. Further, we do not believe our decision to deny a stay will have any significant effect on facilities subject to a SIP-approved major NSR program. We have provided these States up to three years to make appropriate changes to their SIP-approved programs. We intend to complete our reconsideration of the final rules regarding the issues discussed in this **Federal Register** notice quickly (*i.e.*, in approximately 90 days), thus, any uncertainty regarding the final rules caused by our partial granting of the petitions for reconsideration will be for a short period. States will still have ample time after our final decision on reconsideration to revise their SIPs to implement the rule (and any changes resulting from our reconsideration). As a result, we do not think it would be appropriate to stay the effectiveness of the rule while we address a few issues raised in the petitions.⁸

IV. Discussion of Issues

A. Analysis of Environmental Impact of Final Rule

In November 2002, we released a document entitled, "Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules." As we noted at that time, the analysis was intended to provide the interested public with supplemental information on the potential environmental effects of the NSR Improvement rules that we were finalizing.

In the supplemental environmental analysis, we found that the overall effect of the final rule would be a net benefit to the environment compared to the

⁷ See EPA'S Response to Emergency Motion For Stay of the New Source Review Rule (Feb. 21, 2003) (D.C. Cir. Docket No. 02-1387); see also Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules (EPA Docket ID No. A-90-37; Document IV-A-7).

⁸ If during the course of reconsideration we determine that significant aspects of the final NSR rules should be revised, we could reevaluate whether to stay the effectiveness of the rules, or portions thereof, pending issuance of our final decision on reconsideration.

former NSR rules because the final rule would result in reductions in emissions of air pollution. We found that four of the five provisions in the final rule would result in environmental benefits, and the other provision would have no significant effect. Specifically, for each of the rule's five provisions, the analysis concludes the following:

(1) The PAL provisions will result in tens of thousands of tons per year (tpy) of volatile organic compounds (VOC) reductions from just three industrial categories where PALs are likely to be used most often. Overall reductions will be greater because it is likely that PALs also will be adopted in other source categories.

(2) The Clean Unit Test will be environmentally neutral for most sources, but some sources will likely control emissions earlier or more extensively than under the former rules, and, as a result, a net benefit will occur. The amount of this benefit is uncertain nationally, but likely will be significant in individual cases, like the estimated 9,300 tpy reduction in smog-causing VOC seen in one example.

(3) The PCP Exclusion will lead to a small increase in the number of environmentally beneficial projects because it removes NSR barriers to such projects. The amount of this benefit is uncertain nationally, but will likely be relatively small.

(4) The portion of the rule addressing baseline actual emissions will not have a significant environmental impact. The former program already allowed sources to use a more representative baseline period, with the approval of the reviewing authority, instead of the two-year period before the change specifically delineated in the former rules. The final rules provide an expanded time frame from which you may select a representative baseline but eliminate the option of going beyond this period of time. While the new rules may allow a small number of existing emissions units to use higher baselines, other units will be required to use lower baselines due to the requirement to adjust the baseline downward to account for any new emission limitations at that emissions unit. The changes overall impact will be small because the portion of the rule addressing baseline actual emissions does not affect new sources, new units built at existing sources, electric utilities, and many modified sources.

(5) The change to the actual-to-projected-actual test will have a net environmental benefit, but a relatively small one. The benefit stems from removing: (1) Incentives to keep actual emissions high before making a change,

and (2) barriers to projects that will reduce emissions. The size of this benefit nationally is uncertain. Its impact would be small because the change in emissions calculation methodology does not affect either of the following: (1) New sources, new units built at existing industrial facilities, and electric utilities, or (2) any modifications at existing facilities that actually result in significant increases in emissions. Historically, under the previous major NSR rule, virtually all other sources making a physical or operational change have accepted "permit limits" so as to be confident that they will not trigger major NSR. Our analysis concludes that the benefits from this aspect of the program are likewise largely unaffected because such sources must still assure that actual emissions do not significantly increase as a result of a change.

The supplemental environmental analysis uses quantitative information where possible but also notes limitations on our ability to quantify impacts of the rule. We used qualitative information to supplement the analysis when such limitations are present. We also noted that the final rules will result in economic benefits that stem from improved flexibility, increased certainty, and reduced administrative burden. These benefits are important, but were not quantified as part of this environmental analysis.

The analysis is available in the docket for today's action and is also available on the Internet at <http://www.epa.gov/nsr>. We request comment on all aspects of the environmental impact of the final rule.

B. Plantwide Applicability Limitations (PALs)

1. Background

The December 31, 2002 final major NSR rule included an innovative approach to managing major NSR applicability at major stationary sources based on actual plantwide annual emissions. Under these provisions, an owner or operator (you) of a major stationary source (source) may elect to establish a source-wide cap on emissions, known as a "plantwide applicability limitation" (PAL), based on your source's baseline actual emissions. As long as you do not exceed this "actuals PAL," a significant emissions increase has not occurred. Without a significant emissions increase, no change at your facility is considered a major modification, and you are not subject to major NSR.

Today, we are soliciting comment on two aspects of the PAL final rules. These issues are discussed below.

2. Emission Units for Which You Begin Actual Construction After the Baseline Period

In general, the PAL level is established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at your major stationary source. The baseline period may be any consecutive 24-month period during the preceding 10 years, but you must use the same baseline period for all existing emissions units. However, the final rules contain special provisions for an emissions unit on which you began actual construction after the 24-month baseline period. The reviewing authority must use the potential to emit (PTE) of such emissions units in establishing the PAL. See 40 CFR 51.165(f)(6), 51.166(w)(6), 52.21(aa)(6). This provision is intended to serve as a counterpart to the requirement to exclude from the PAL level any emissions from emissions units that were permanently shut down after the baseline period.

We included these provisions in recognition that the set of emissions units at your source at the time of PAL permit issuance may be different from the set of emissions units that existed during the baseline period. You may have constructed additional emissions units, permanently shut down previously existing emissions units, or both. The actuals PAL rule is designed to ensure that the PAL level is adjusted to reflect the present-day configuration of emissions units at your source. Thus, it instructs the reviewing authority to exclude from the PAL level emissions from permanently shut down units and to add to the PAL level the PTE of emissions units on which you began actual construction after the baseline period.

We considered applying the procedures for determining baseline actual emissions at 40 CFR 51.165(a)(1)(xxxv), 51.166(b)(47), and 52.21(b)(48); however, under these procedures the baseline actual emissions of the existing emissions units on which you began actual construction after the selected baseline period would be zero. When these procedures are used for determining applicability of the major NSR requirements, we believe this is an appropriate outcome because such determinations ordinarily involve a limited set of emissions units (those that are part of a modification) at the major stationary source and issues related to start up and shutdown of emissions

units are typically not implicated. You have the ability to choose the 24-month baseline period that accommodates the integrated operations of this limited set of emissions units. Moreover, the baseline actual emissions are only used as a measure to determine whether a project will trigger major NSR review. It is not used as an enforceable restriction on the ability of the emissions units to operate.

In contrast, setting a PAL involves all of the emissions units at the major stationary source. Selecting a single 24-month period that accommodates the integrated operations of all of these emissions units is more difficult and will often involve emission units that start up or shut down after the baseline period. Moreover, establishing a baseline actual emissions of zero is an unrealistic reflection of how the emissions unit will be operated and could require you to unreasonably restrict operations at the major stationary source to ensure you comply with the PAL.

We also considered but rejected several other approaches. First, we considered requiring you to use the immediately preceding 24 months to establish an average annual emissions rate for such emissions units, or requiring all existing emissions units to follow this approach. However, as discussed in the December 31, 2002 preamble (67 FR 80191), this approach does not account for normal fluctuations in operations and may not be representative of source operations.

We also considered making no adjustments for either shut down emissions units or newly constructed emissions units, but this approach seemed to be least representative of a major stationary source's current operations. And finally, we considered allowing you to select different 24-month periods for each existing emissions unit at the major stationary source or allowing you to select any 24-month period since operations began for the recently constructed emissions units.

We believe that the former approach would unnecessarily complicate the procedures for establishing PALs and allow you to inappropriately maximize source-wide emissions. The latter approach has some advantage in that it provides a measure of past emissions; however, we rejected this approach in favor of using the PTE of the emissions unit. This is because we believe that most emissions units that have been constructed after the baseline period are likely to have undergone major or minor

NSR review.⁹ Thus, the PTE of the emissions unit reflects requirements to comply with recent control technology requirements and other emission limitations that are representative of how you intend to actually operate the emissions unit. The past emissions of such emissions units, when measured over a shortened period of time, may not be representative of intended operations.

In view of all of these considerations, we believe that including the PTE of the emissions unit in the PAL baseline is the most appropriate measure of actual operations of such emissions units for the purpose of establishing an enforceable limitation on your operations. We believe such a provision falls within the discussion of PALs in the proposed rule. Nevertheless, we request comment on this approach, the approaches we rejected, and any other method for assessing emissions from these emissions units.

3. Elimination of Synthetic Minor Limits [(r)(4) Limits]

A synthetic minor limit is a limit that is included in a permit by a reviewing authority at the request of a source to reduce the potential to emit (PTE) of a facility or emissions unit below a level that would otherwise subject the facility or emissions unit to some regulatory requirement. Such limits are often used by a facility to reduce emissions below a level that would subject a project to the major NSR requirements. (They are also used for similar purposes under other regulatory programs.)

Under the major NSR program, we refer to these emission or operational limitations as (r)(4) limits because provisions relating to these types of restrictions are contained in paragraph (r)(4) of the Federal Prevention of Significant Deterioration (PSD) Program. See 40 CFR 52.21(r)(4). Similar provisions are contained in the requirements for State programs. See 40 CFR 52.165(a)(5)(ii), 51.166(r)(2).

In the December 31, 2002 final rule, we specified that a reviewing authority can eliminate (r)(4) limits for a PAL pollutant if you previously took these limits to avoid major NSR. In the absence of a PAL, relaxation of such

limits would cause you to determine major NSR applicability as if construction had not yet commenced on the new or modified emissions units. See 40 CFR 52.165(a)(5)(ii), 51.166(r)(2), 52.21(r)(4). Under a PAL, such limits may be relaxed or removed without triggering major NSR for the PAL pollutant. 67 FR 80210; 40 CFR 165(f)(1)(iii)(C), 166(w)(1)(ii)(c), 52.21(aa)(1)(ii)(c). The (r)(4) limits do not reappear upon PAL expiration. 67 FR 80209; 40 CFR 51.165(f)(9)(v), 51.166(w)(9)(v), 52.21(aa)(9)(v). Instead, they are reapportioned, along with the PAL, among the existing emissions units. We believe the approach adopted in the final rules reflect the purpose of a PAL, which is to maximize operational flexibility without sacrificing environmental protection.

We view the PAL as the functional substitute for any unit-specific (r)(4) limits that you may have taken to reduce emissions below a level that would subject a project to major NSR requirements. Both the PAL and the (r)(4) limits serve to keep you from triggering major NSR. Emissions from emissions units with (r)(4) limits are incorporated into the PAL at a level that is at or, in most cases, below those limits. Therefore, the PAL is an effective substitute for those limits. More importantly, we believe that removal of these limits is essential to allow you to benefit from the operational flexibility and corresponding environmental benefits that the PAL is intended to provide.

We considered reinstating (r)(4) limits if a PAL expires. However, we rejected this approach because we recognize that you may have made changes to the emissions unit or associated operations, and it may not be practical to return the emissions unit to its pre-PAL operations. Instead, the final rules ensure that the (r)(4) limitations that are incorporated into the PAL continue to play a role after PAL expiration, although not in the same form.

Before a PAL expires, you must submit a proposal for distributing the PAL among individual emissions units or groups of emissions units. The reviewing authority will make the final decision on PAL emissions distribution. Following expiration, you must ensure that the individual emissions units or groups of emissions units comply with their limits as assigned by the reviewing authority. In this way, the emission restrictions associated with an (r)(4) limitation are accounted for after PAL expiration. However, the new emission limitation(s) would not be subject to the requirements of 40 CFR 52.21(r)(4).

⁹In 1997, we conducted an informal review of several State minor NSR programs. While this report is still considered draft, it provides a good overview of the types of requirements contained in many State minor NSR requirements and serves to confirm our belief that many projects that are not subject to major NSR review will be required to comply with requirements under State minor NSR programs. We have included a copy of this draft report in the docket for today's action and invite comment on whether this document accurately reflects State or local requirements.

We are proposing to retain our approach for removing and superseding (r)(4) limits with a PAL. We request comment on this approach.

C. Actual-to-Projected-Actual Test

1. Background

In 1996, we proposed to allow use of the "future-actual methodology" to compute whether a physical change in or change in the method of operation of the major stationary source would result in a significant emissions increase. Previously, this methodology was only available to EUSGUs under the WEPCO rule.¹⁰ Our 1996 notice proposed to extend a version of the WEPCO rule to all source categories. In that proposal, we sought comment on several issues including whether the 5-year reporting provision is working as intended and whether it should be changed in any way. We adopted a modified WEPCO approach in the final rules. We call this approach the "actual-to-projected-actual" applicability test. This test is similar to the WEPCO rule in that it allows you to consider "demand growth" in determining post-change emissions, but it contains recordkeeping and reporting requirements that differ from those in the WEPCO rule.¹¹ (There are other differences between the two approaches, but these differences are not relevant to the following discussions.)

Today, we are soliciting comments on an issue related to the recordkeeping and reporting requirements under the actual-to-projected-actual applicability test and on allowing replacement units to use the actual-to-projected-actual applicability test. These issues are discussed below.

2. Reasonable Possibility

As noted above, the recordkeeping and reporting requirements in the final rules differ from those in the WEPCO rule. The WEPCO rules required EUSGUs that relied on the actual-to-representative-future-actual-annual emissions test to submit annual emission reports. In contrast, the final rules require non-EUSGUs (that project future emissions rather than relying on potential emissions as a measure of

future emissions) to: maintain certain records related to the emissions projection and records of the post-change emissions (for either 5 years or 10 years depending on the nature of the change); and report if there is a significant emission increase in post-change emissions which is inconsistent with the source's preconstruction projection.¹² For EUSGUs (that project future emissions rather than relying on potential emissions as a measure of future emissions), the final rules require you to send a copy of the information to the reviewing authority that you are required to keep relating to your projection. However, all of these reporting and recordkeeping requirements apply to non-EUSGUs and EUSGUs only if there is a "reasonable possibility" that the project will result in a significant emissions increase.

We included these changes to respond to comments we received in response to our request for comments on whether the 5-year reporting provisions of the WEPCO rule were working as intended and whether these requirements should be changed. Some commenters indicated that the 5-year recordkeeping and reporting requirements were onerous. Commenters also noted that the requirements were unnecessary because similar information is available through the title V permitting program and State emission inventories. Other commenters requested that we retain an option to use the actual-to-potential approach, which does not require recordkeeping or reporting. We retained that option within the actual-to-projected-actual applicability test.

In 1998, we solicited additional comment on an approach that would have required you to obtain a federally enforceable permit to limit your post-change emissions to your projected levels (the actual-to-future-enforceable-actual test), and again solicited comment on the appropriate recordkeeping and reporting requirements. In general, commenters were supportive of a 5-year recordkeeping requirement. Responses were mixed as to whether we should extend the requirement to 10 years if the permitting authority believed it appropriate. Again, we received comments that reporting and recordkeeping requirements were duplicative of those required by other programs. Also, we received comments from State agencies concerned with the resource burden that would be imposed

by requirements of the actual-to-future-actual test.

In an effort to balance the need for information to determine compliance and the associated burden of recordkeeping and reporting, we finalized the changes to the proposed recordkeeping and reporting requirements. We included the "reasonable possibility" provision because we were concerned that without some qualifier on when you need to retain records and report, our rules would encompass any physical or operational change you undertake no matter how inconsequential and unlikely that an emissions increase would result.

We believe that, in some circumstances, the requirements to record and report emissions following completion of certain types of projects is a substantial strengthening over the former regulatory requirements that applied to non-EUSGUs. The former rules contained no reporting or recordkeeping requirements when you determined that major NSR did not apply. For example, the former rules allowed you to make your own determination as to whether major NSR applied to a project. If you determined that an emissions increase from a project was less than significant, you could proceed with the project, and there were no subsequent recordkeeping or reporting requirements under the major NSR program. The same result occurred if you determined your project would result in a significant emissions increase but you were able to "net" the project out of review. Under the revised rules, if you project future emissions rather than relying on potential emissions as a measure of future emissions, you (whether an EUSGU or non-EUSGU) are required to record and report any project for which you avoid the major NSR requirements through "netting," because you will have already determined that such projects will result in a significant emissions increase.

We are proposing to retain the "reasonable possibility" requirement for triggering the applicability of the recordkeeping and reporting provisions discussed above. We believe these provisions are appropriate based on our proposal and the comments received thereon; nevertheless, we are requesting comment on this approach.

3. Replacement Unit

The WEPCO rule precluded use of the actual-to-representative-future-actual-annual emissions test for replacement units. See 40 CFR 52.21(b)(921)(v)(2002). Although the

¹⁰ See 57 FR 32314, July 21, 1992. This rule is called the "WEPCO rule" because a court case involving the Wisconsin Power and Electric Company (WEPCO) was the reason behind the rulemaking.

¹¹ We use the term "demand growth" to refer broadly to independent factors that may cause emissions increases from an emission unit, but which the emissions unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions, and that are also unrelated to the particular project.

¹² If you rely on potential emissions as a measure of future emissions, you have no recordkeeping requirements related to your applicability determination under the final rules.

1996 preamble recognized this preclusion in our discussion of extending the WEPCO rule to other industrial sectors, *see* 62 FR 38267, the proposed regulatory language removed the preclusion and would have allowed all emissions units (EUSGUs and non-EUSGUs), including replacement units, to use the actual-to-future-actual emissions test. *See* proposed 40 CFR 52.21(b)(21)(ii), 61 FR 38338.

In the final rules, we concluded we should not preclude use of the actual-to-projected-actual test either for EUSGUs or non-EUSGUs replacement units. We explained the basis for our conclusion in the final rule. *See* 67 FR 80194. Although we discussed this issue in the proposal, we are seeking comment on our determination on this issue and the basis for it set forth in the preamble to the final rules.

D. Clean Unit

1. Background

Our December 31, 2002 final rules finalize provisions that provide added flexibility to emissions units that install state-of-the-art emissions controls. Specifically, we promulgated a new type of major NSR applicability test for emissions units that are designated as Clean Units.

The Clean Unit applicability test ("Clean Unit Test") measures whether an emissions increase occurs, based on whether a project affects the Clean Unit status of the emissions unit. The Clean Unit Test provides that when you meet emission limitations based on installing state-of-the-art emissions control technologies (add-on controls, pollution prevention, or work practices) that are determined to be BACT or LAER (or comparable to BACT or LAER), you may make any physical or operational change to the unit without triggering major NSR, provided that the change does not (1) necessitate a revision in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT, LAER, or Clean Unit determinations; or (2) alter any physical or operational characteristics that formed the basis for the BACT, LAER, or Clean Unit determination for the unit.

Today, we are requesting comment on one aspect of the final rules for Clean units. This issue is discussed below.

2. Effect of Redesignation on Clean Unit Status

The final rules allow you to maintain Clean Unit status at an emissions unit even if the area in which you are located was attainment for the pollutant at the time the emissions unit was designated

clean but is subsequently redesignated to nonattainment. Our 1996 proposal did not specifically address this issue. It did, however, propose that Clean Unit status would presumptively apply for the 10 years following issuance of the major NSR permit, and it did not indicate that the presumption would be revoked if the area was redesignated. Therefore, we believe a natural implication of the proposal is that the Clean Unit status would presumptively continue to apply even if the area were redesignated.

We continue to believe that you should be allowed to maintain your Clean Unit status even if your area is redesignated from attainment to nonattainment for the pollutant for which your emissions unit is designated clean. This approach is most consistent with our current practices and fundamental to the policy of creating incentives to reduce emissions.

As a general rule, permitting decisions are not *per se* invalid, or retroactively changed by virtue of a change in an area's attainment status. For example, we do not require sources that have applied BACT to upgrade controls to comply with LAER or obtain offsets when an area's designation changes.

Moreover, a fundamental premise in creating the Clean Unit Test is to provide you with an incentive to install better emissions control technologies even when there is no State, local or Federal regulation requiring this level of control. We believe that this incentive will be undermined if you are unable to know with certainty that the added flexibility will be available to you for the full 10-year period.

We also believe that this approach is consistent with the Clean Air Act. The requirements of section 173 of the Act, including the requirements to apply LAER and obtain offsets, apply only if a project will result in an emissions increase. As long as an emissions unit maintains its status as a Clean Unit, it has not increased emissions. Thus, the provisions of section 173 do not apply to such emissions units.

Finally, because States will have established the Clean Units either through the major NSR permitting process or another permitting process, the State will be aware of which emissions units qualify as Clean Units at the time an area is redesignated. Thus, States that are concerned that Clean Units may have adverse impact on their attainment demonstrations if the full effect of their potential emissions is realized are able to make appropriate adjustments in their attainment demonstrations to account for these

permitted emissions. In this respect, we believe that the Clean Unit Test provides States with a better planning tool than may otherwise exist in the absence of the Clean Unit Test.

As noted above, we proposed in 1996 that an emission unit's Clean Unit status would remain in place for 10 years, and implicitly indicated that nonattainment redesignation would not affect the unit's status during that 10 years. We, however, request comment on this approach and the rationale set forth above.

V. Statutory and Executive Order Reviews

On December 31, 2002, we finalized rule changes to the regulations governing the NSR programs mandated by parts C and D of title I of the Act. With today's action we are proposing no changes to the final rules, and are seeking additional comments on some of the provisions finalized in the December 2002 **Federal Register** notice (67 FR 80186). Accordingly, we believe that the rationale provided with the final rules is still applicable and sufficient.

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to

OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. We are not proposing any new paperwork (e.g., monitoring, reporting, recordkeeping) as part of today's notice. With this action we are seeking additional comments on some of the provisions finalized in the December 2002 **Federal Register** Notice (67 FR 80186). However, OMB has previously approved the information collection requirements contained in the existing regulations [40 CFR Parts 51 and 52] under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060-0003, EPA ICR number 1230.11. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a

substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's notice on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is a not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's notice on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect, on all of the small entities subject to the rule. A Regulatory Flexibility Act Screening Analysis (RFASA), developed as part of a 1994 draft Regulatory Impact Analysis (RIA) and incorporated into the September 1995 ICR renewal analysis, showed that the changes to the NSR program due to the 1990 Clean Air Act amendments would not have an adverse impact on small entities. This analysis encompassed the entire universe of applicable major sources that were likely to also be small businesses (approximately 50 "small business" major sources). Because the administrative burden of the NSR program is the primary source of the NSR program's regulatory costs, the analysis estimated a negligible "cost to sales" (regulatory cost divided by the business category mean revenue) ratio for this source group. Currently, and as reported in the current ICR, there is no economic basis for a different conclusion.

We believe the rule changes in the December 31, 2002 final rule will reduce the regulatory burden associated

with the major NSR program for all sources, including all small businesses, by improving the operational flexibility of owners and operators, improving the clarity of requirements, and providing alternatives that sources may take advantage of to further improve their operational flexibility. We do not expect that today's action will change our overall assessment of regulatory burden so substantially as to result in a significant adverse impact on any source. As a result, we do not expect that today's action will result in a significant adverse impact on any small entity.

We continue to be interested in the potential impacts of today's action on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective or least burdensome alternative if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan.

The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising

small governments on compliance with the regulatory requirements.

We have determined that today's notice does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Although initially the changes in the December 31, 2002 final rule are expected to result in a small increase in the burden imposed upon reviewing authorities in order for them to be included in the State's SIP, as well as other small increases in burden discussed under "Paperwork Reduction Act" in the preamble to the December 31, 2002 final rule, those revisions will ultimately provide greater operational flexibility to sources permitted by the States, which will in turn reduce the overall burden of the program on State and local authorities by reducing the number of required permit modifications. In addition, we believe the 2002 rule changes will actually reduce the regulatory burden associated with the major NSR program by improving the operational flexibility of owners and operators, improving the clarity of requirements, and providing alternatives that sources may take advantage of to further improve their operational flexibility. Because we are proposing no changes to the final rule, we believe that the same is true for today's notice. It is highly unlikely that today's action would increase regulatory burden to the extent of requiring expenditures of \$100 million or more by State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reasons stated above, we have determined that today's notice contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government."

Today's action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. While the final rule published on December 31, 2002 will result in some expenditures by the States, we expect those expenditures to be limited to \$331,250 per year. This figure includes the small increase in the burden imposed upon reviewing authorities in order for them to revise the State's SIP. However, the revisions contained in the December 31, 2002 final rule provide greater operational flexibility to sources permitted by the States, which will in turn reduce the overall burden of the program on State and local authorities by reducing the number of required permit modifications. Because we are proposing no changes to the final rules, we do not expect that today's notice would increase regulatory burden to the extent that it would result in substantial direct effects on the States. Thus, Executive Order 13132 does not apply to today's notice.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on today's action from State and local officials.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." Today's action does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

The purpose of the December 31, 2002 final rule is to add greater flexibility to the existing major NSR regulations. Those changes will benefit permitting authorities and the regulated community, including any major source owned by a tribal government or located in or near tribal land, by providing increased certainty as to when the requirements of the NSR program apply. Taken as a whole, the December 31, 2002 final rule should result in no

added burden or compliance costs and should not substantially change the level of environmental performance achieved under the previous rules.

EPA anticipates that initially the changes in the December 31, 2002 final rule will result in a small increase in the burden imposed upon Reviewing Authorities in order for them to be included in the State's SIP. Nevertheless, those revisions will ultimately provide greater operational flexibility to sources permitted by the States, which will in turn reduce the overall burden of the program on State and local authorities by reducing the number of required permit modifications. In comparison, no tribal government currently has an approved tribal implementation plan (TIP) under the Clean Air Act to implement the NSR program. The Federal government is currently the NSR permitting authority in Indian country. Thus, tribal governments should not experience added burden from the December 31, 2002 final rule, nor should their laws be affected with respect to implementation of that rule. Additionally, although major stationary sources affected by the December 31, 2002 final rule could be located in or near Indian country and/or be owned or operated by tribal governments, such sources would not incur additional costs or compliance burdens as a result of that rule. Instead, the only effect on such sources should be the benefit of the added certainty and flexibility provided by that rule. For the reasons stated above, we do not believe that any changes resulting from today's notice would increase burden for tribal governments. In addition, we do not anticipate that any such changes would have substantial direct effects on sources located in or near Indian country or sources owned or operated by tribal governments.

EPA specifically solicits additional comment on today's notice from tribal officials.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of

the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's action is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. We believe that the December 31, 2002 final rule as a whole will result in equal or better environmental protection than provided by earlier regulations, and do so in a more streamlined and effective manner. Similarly, today's notice is not expected to change substantially the level of environmental protection provided by the December 31, 2002 final rule, and as a result, it is not expected to present a disproportionate environmental health or safety risk for children.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Today's notice is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The December 31, 2002 final rule improves the ability of sources to undertake pollution prevention or energy efficiency projects, switch to less polluting fuels or raw materials, maintain the reliability of production facilities, and effectively utilize and improve existing capacity. That rule also includes a number of provisions to streamline administrative and permitting processes so that facilities can quickly accommodate changes in supply and demand. It provides several alternatives that are specifically designed to reduce administrative burden for sources that use pollution prevention or energy efficient projects. We do not expect that today's action would result in changes to the final rules that are so substantial as to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus

standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's notice does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

VI. Statutory Authority

The statutory authority for this action is provided by sections 307(d)(7)(B), 101, 111, 114, 116, and 301 of the CAA as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601). This notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects in 40 CFR Parts 51 and 52

Environmental protection, Administrative practice and procedure, Air pollution control, BACT, Baseline emissions, Carbon monoxide, Clean Units, Hydrocarbons, Intergovernmental relations, LAER, Lead, Major modifications, Nitrogen oxides, Ozone, Particulate matter, Plantwide applicability limitations, Pollution control projects, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 25, 2003.

Jeffrey Holmstead,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 03-19356 Filed 7-29-03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX-164-1-7602a; FRL-7536-8]

Approval and Promulgation of Implementation Plans; Texas; Control of Emission of Oxides of Nitrogen From Cement Kilns

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on revisions to the Texas State Implementation Plan (SIP). These

revisions concern Control of Air Pollution from Nitrogen Compounds, Cement Kilns. The EPA is approving these SIP revisions for cement kilns as they will contribute to attainment of the 1-hour ozone National Ambient Air quality Standards (NAAQS). The EPA is approving emissions of Oxides of Nitrogen (NO_x) for cement kilns in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: This rule is effective on September 29, 2003 without further notice, unless EPA receives adverse comment by August 29, 2003. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Electronic comments should be sent either to Diggs.Thomas@epa.gov or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Final Action part of this document. Copies of the Technical Support Document (TSD) and other documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-6691, and shar.alan@epa.gov.

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