

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 51 and 52**

[EPA-HQ-OAR-2003-0064; FRL-8773-3]

RIN 2060-AL75

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation**AGENCY:** Environmental Protection Agency.**ACTION:** Delay of effective date.

SUMMARY: In a separate document in the "Rules" section of this **Federal Register**, the Environmental Protection Agency (EPA) announced the convening of a proceeding for reconsideration of the final rule that amends the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR) regulations addressing aggregation published in the **Federal Register** on January 15, 2009. By this action, the EPA is administratively staying and delaying the effective date of this rule for 90 days. Thus, the January 15, 2009 rule will become effective on May 18, 2009.

DATES: The effective date of FR Doc. E9-815, published in the **Federal Register** on January 15, 2009 (74 FR 2376) is delayed to May 18, 2009.

ADDRESSES: *Docket:* The final rule, the petition for reconsideration, and all other documents in the record for the rulemaking are in Docket ID No. EPA-HQ-OAR-2003-0064. 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 Air and Radiation Docket and Information Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The 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 Public Reading Room is (202) 566-1744.

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SUPPLEMENTARY INFORMATION:**I. Background**

On January 15, 2009, the EPA ("we") issued a final rule amending the PSD and nonattainment NSR regulations that implement the definition of "modification" in the Clean Air Act (CAA) section 111(a)(4). The amendments addressed when a source must combine ("aggregate") nominally-separate physical changes and changes in the method of operation for the purpose of determining whether they are a single change under NSR and result in a significant emissions increase. The amendments retained the existing rule language for aggregation but interpreted that rule text to mean that sources and permitting authorities should combine emissions when activities are "substantially related." It also adopted a rebuttable presumption that activities at a plant can be presumed not to be substantially related if they occur three or more years apart. Collectively, this rulemaking is known as the "NSR Aggregation Amendments." For further information on the NSR Aggregation Amendments, see 74 FR 2376 (January 15, 2009).

On January 30, 2009, the Natural Resources Defense Council (NRDC) submitted a petition for reconsideration of the NSR Aggregation Amendments as provided for in CAA section 307(d)(7)(B). Under that provision, the Administrator may commence a reconsideration proceeding if the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period. In either case, the objection must be of central relevance to the outcome of the rule. The Administrator may stay the effectiveness of the rule for up to three months during such reconsideration.

In addition to receiving the NRDC Petition, we considered two memoranda to executive agencies: The January 20, 2009, White House memorandum entitled, "Regulatory Review," and the memorandum from the Office of Management and Budget entitled, "Implementation of Memorandum Concerning Regulatory Review" (M-09-08, January 21, 2009) (OMB memorandum). These memoranda suggest that agencies consider extending for 60 days the effective date of rules that were published prior to January 20, 2009 but which have not yet become effective when these rules raise substantial questions of law and policy.

Having considered the objections raised in the NRDC Petition, we believe the grounds for at least one of their objections arose after the comment period and are of central relevance to the NSR Aggregation Amendment. The concerns set forth in the NRDC Petition also raise substantial questions of law and policy. In a separate document in the "Rules" section of this **Federal Register**, we are announcing the convening of a proceeding for reconsideration of the NSR Aggregation Amendments. Due to the unique procedural rights granted under CAA section 307(d)(7)(B), including the right to request a hearing and the obligation to keep the record for the hearing open for 30 days, we believe that a 90-day stay of effectiveness is more appropriate than the shorter period recommended in "Regulatory Review" and the OMB memorandum.

II. Issuance of a Stay and Delay of Effective Date

The EPA hereby issues a three-month (90-day) administrative stay of the effectiveness of the NSR Aggregation Amendments. We will follow the notice and comment procedures under CAA 307(d), including providing an opportunity for a hearing, and will take appropriate action thereafter. To implement this administrative stay, we are delaying the effective date of FR Doc. E9-815, published in the **Federal Register** on January 15, 2009 (74 FR 2376), to May 18, 2009.

List of Subjects**40 CFR Part 51**

Environmental protection, Administrative practice and procedure, Air pollution control, Baseline emissions, Intergovernmental relations, Aggregation, Major modifications, Reporting and recordkeeping requirements.

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Baseline emissions, Intergovernmental relations, Aggregation, Major modifications, Reporting and recordkeeping requirements.

Dated: February 9, 2009.

Lisa P. Jackson,
Administrator.

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