

■ 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, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0333 to read as follows:

#### § 165.T09–0333 Safety zone; Marathon Oil Refinery Construction, Rouge River, Detroit, MI

(a) *Location.* The following area is a temporary safety zone: all U.S. waters of the Rouge River, Detroit, MI, bound by a line starting from a point on land on the south shore of the Rouge River at position 42°17.8' N; 083° 9.1' W, continuing southeast to a point on land at position 42°17.7' N; 083° 9.0' W, across to the north side of the river to a point on land at position 42°17.8' N; 083°8.9' W, along the shore northwest to a point on land at position 42°17.8' N; 083°9.0' W, continuing back southwest to the point of origin. All geographic coordinates are North American Datum of 1983 (NAD 83). This safety zone effectively covers all of the Rouge River from the Dix Ave. bridge to the north end of Fordson Island.

(b) *Effective Period.* This regulation is effective from 7 a.m. on May 1, 2010 to 7 p.m. on November 30, 2010. This rule will be enforced from 7 a.m. to 7 p.m. daily, on multiple dates to be determined during the effective period. The public will be notified of the specific enforcement dates as soon as practicable through the publication of a Notice of Enforcement and by Broadcast Notice to Mariners.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The “on-scene representative” of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either

a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: April 30, 2010.

**E.J. Marohn,**

*Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.*

[FR Doc. 2010–11781 Filed 5–17–10; 8:45 am]

**BILLING CODE 9110–04–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 51 and 52

[EPA–HQ–OAR–2003–0064; FRL–9150–5]

RIN 2060–AP80

#### Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation

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

**ACTION:** Delay of effective date.

**SUMMARY:** EPA is delaying the effective date of the final rule titled “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation” under the authority of the Administrative Procedure Act (APA) section 705 until the proceeding for judicial review of this rule is completed or EPA completes the reconsideration of the rule. This final rule for “aggregation,” which EPA published in the **Federal Register** on January 15, 2009, is subject to a petition for review and has not become effective.

**DATES:** The effective date of FR Doc. E9–815, published in the **Federal Register** on January 15, 2009 (74 FR 2376), and delayed on February 13, 2009 (74 FR 7284) and May 14, 2009 (74 FR 22693), which was May 18, 2010, is further delayed until such time as the proceeding for judicial review of this document is completed. The EPA will publish a document in the **Federal Register** announcing the effective date once the delay is no longer necessary.

**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., Confidential Business Information 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.

**FOR FURTHER INFORMATION CONTACT:** Mr. David J. Svendsgaard, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–2380, fax number (919) 541–5509, e-mail address: [svendsgaard.dave@epa.gov](mailto:svendsgaard.dave@epa.gov).

#### 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 Clean Air Act 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 3 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).

The NSR Aggregation Amendments have had their effectiveness delayed by two actions published in the **Federal Register**. See 74 FR 7284 (February 13, 2009) and 74 FR 22693 (May 14, 2009).

The latter action established an effective date of May 18, 2010. On the same day as the first action delaying the effectiveness of the NSR Aggregation Amendments, the EPA convened a proceeding for reconsideration in response to a petition from the Natural Resources Defense Council (NRDC).<sup>1</sup> See 74 FR 7193 (February 13, 2009). In addition to filing a petition for reconsideration with EPA, NRDC also filed a petition for review of the NSR Aggregation Amendments in Federal Court.<sup>2</sup>

On April 15, 2010, we published in the **Federal Register** a notice soliciting comments on the NRDC petition for reconsideration (75 FR 19567). In that notice, we solicited comment on revoking the NSR Aggregation Amendments and reverting to our policies on aggregation as they existed prior to the Amendments. We requested comment on whether the NSR Aggregation Amendments are inconsistent with the statute and key legal precedent, do not properly resolve the relevant policy issues, raise implementation concerns, and otherwise do not sufficiently clarify our aggregation policy to justify abandoning our prior policy. Additionally, we proposed to further delay the effective date for the NSR Aggregation Amendments beyond May 18, 2010.

Under section 705 of the APA, "an agency \* \* \* may postpone the effective date of [an] action taken by it pending judicial review." The provision requires that the agency find that justice requires postponing the action, that the action not have gone into effect, and that litigation be pending. As described above, the latter two requirements plainly are met. We find that justice requires postponing the effectiveness of the NSR Aggregation Amendments because allowing the rule to become effective when the Agency has expressed serious concerns about its viability and policy soundness would lead to confusion in the regulated community and the public as well as create difficulties for implementing agencies administering the program.

We also note that the comment period for the April 15, 2010 notice ends on May 17, 2010. We would not be able to review and respond to comments on that notice before the NSR Aggregation Amendments would become effective on May 18, 2010. The failure to complete the reconsideration or the proposed delay in the effective date would result in the confusion and

difficulties noted above. Therefore, we find that justice requires postponing the effectiveness of the NSR Aggregation Amendments in order to allow for proper evaluation of the comments on the April 15, 2010 notice.

## II. Issuance of a Stay and Delay of Effective Date

Pursuant to section 705 of the APA, the EPA hereby postpones the effectiveness of the NSR Aggregation Amendments until resolution of the proceeding for judicial review of this rule or the completion of the reconsideration process. By this action, we are delaying the effective date of FR Doc. E9-815, published in the **Federal Register** on January 15, 2009 (74 FR 2376). This delay of effectiveness will remain in place until judicial review is no longer pending or EPA completes the reconsideration process.

### List of Subjects

#### 40 CFR Part 51

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

#### 40 CFR Part 52

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

Dated: May 6, 2010.

**Lisa P. Jackson,**

*Administrator.*

[FR Doc. 2010-11299 Filed 5-17-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2010-0148; FRL-9151-6]

### Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to the Discrete Emission Credit Banking and Trading Program

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving severable portions of two revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on

October 24, 2006, and August 16, 2007. These revisions amend existing sections and create a new section in Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 4—Discrete Emission Credit Banking and Trading, referred to elsewhere in this notice as the Discrete Emission Reduction Credit (DERC) Program. The October 24, 2006, submittal creates a new section for international emission reduction provisions and amends existing sections to prohibit the generation and use of DERCs from shutdown activities and further clarify procedures for using emission protocols. The August 16, 2007, submittal amends two sections of the DERC program to update cross-references to recently recodified 30 TAC Chapter 117 provisions. Additionally, EPA finds that the Texas Commission on Environmental Quality (TCEQ) has satisfied all elements of our September 6, 2006, final conditional approval of the DERC program with the submittal of the October 24, 2006, SIP submittal; and as such, the DERC program conditional approval is converted to a full approval. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Federal Clean Air Act (the Act or CAA).

**DATES:** This final rule will be effective June 17, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2010-0148. 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 Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the

<sup>1</sup> John Walke, Natural Resources Defense Council, EPA-HQ-OAR-2003-0064-0116.1.

<sup>2</sup> *NRDC v. EPA*, No. 09-1103 (DC Cir.).