

the permission of the Commander, 45th Space Wing or his/her designee.

(2) Due to the nature of this restricted area, closures may occur with very little advance notice. Closure of the area shall be noticed by the display of a red ball and red beacon from a 90-foot pole near the shoreline at approximately latitude 28°35.0' N, longitude 80°34.8' W and from a 90-foot pole near the shoreline at approximately latitude 28°25.3' N, longitude 80°35.0' W. Information will be provided via Marine Radio broadcast and a warning statement displayed on an electronic marquee sign located on the north side of the Port Canaveral ship channel between the Trident and Poseidon Wharf during the duration of the area closure.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, 45th Space Wing, Patrick Air Force Base, Florida and/or such persons or agencies as he/she may designate.

Dated: March 9, 2009.

**Michael Ensich,**

Chief, Operations, Directorate of Civil Works.  
[FR Doc. E9-5746 Filed 3-17-09; 8:45 am]

BILLING CODE 3710-92-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 51 and 52

[EPA-HQ-OAR-2003-0064; FRL-8783-4]

RIN 2060-AP49

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed Rule.

**SUMMARY:** EPA is proposing to delay the effective date for the Environmental Protection Agency ("EPA") rule addressing "aggregation" under the Prevention of Significant Deterioration ("PSD") and the nonattainment New Source Review ("nonattainment NSR") programs (collectively, "NSR") published in the **Federal Register** on January 15, 2009. This rule (the "NSR Aggregation Amendments") described 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 resulting in a significant emissions increase.

On January 30, 2009, the Natural Resources Defense Council ("NRDC")

submitted a petition for reconsideration (the "NRDC Petition") of the NSR Aggregation Amendments. In response to the NRDC Petition, EPA announced on February 13, 2009, that it would convene a reconsideration proceeding for the NSR Aggregation Amendments and would delay the effective date of the rule from February 17, 2009 until May 18, 2009. In this action, EPA is proposing an additional delay of the effective date of the NSR Aggregation Amendments and soliciting comment on the duration of this additional delay in order to allow for sufficient time to conduct the reconsideration proceeding.

**DATES:** *Comments.* Comments must be received on or before April 17, 2009.

*Public Hearing.* If anyone contacts EPA requesting a public hearing by March 30, 2009, we will hold a public hearing on April 2, 2009. If a hearing is held, the record for the hearing will remain open until May 4, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2003-0064, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* Environmental Protection Agency, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2003-0064. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information ("CBI") or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* 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, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566-1742.

*Public Hearing:* If a hearing is held, it will be held at the U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20004.

**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 number: (919) 541-2380; fax number: (919) 541-5509; e-mail address [svendsgaard.dave@epa.gov](mailto:svendsgaard.dave@epa.gov).

To request a public hearing, please contact Mrs. Pam Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), U.S. Environmental Protection Agency,

Research Triangle Park, NC 27711; telephone number: (919) 541-0641; fax number: (919) 541-5509; e-mail address: [long.pam@epa.gov](mailto:long.pam@epa.gov).

#### SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does This Action Apply to Me?

Entities potentially affected this proposed action include sources in all industry groups and state, local, and tribal governments.

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

1. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to EPA, 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 claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed to be CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

#### C. Where Can I Get a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of this notice is also available on the World Wide Web. A copy of this notice will be posted at <http://www.epa.gov/nsr>.

#### D. What Information Should I Know About the Public Hearing?

EPA will hold a hearing only if a party notifies EPA by March 30, 2009, expressing its interest in presenting oral testimony on issues addressed in this notice. Any person may request a hearing by calling Mrs. Pam Long at (919) 541-0641 before 5 p.m. on March 30, 2009. Persons interested in presenting oral testimony should contact Mrs. Pam Long at (919) 541-0641. Any person who plans to attend the hearing should also contact Mrs. Pam S. Long at (919) 541-0641 or visit the EPA's Web site at <http://www.epa.gov/nsr> and to learn if a hearing will be held.

If a public hearing is held on this notice, it will be held at the U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20004. Because the hearing will be held at a U.S. Government facility, everyone planning to attend should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please check our Web site at <http://www.epa.gov/nsr> concerning the public hearing.

If held, the public hearing will begin at 10 a.m. and end 1 hour after the last registered speaker has spoken. The hearing will be limited to the subject matter of this document. Oral testimony will be limited to 5 minutes. The EPA encourages commenters to provide written versions of their oral testimony either electronically (on computer disk or CD-ROM) or in paper copy. The list of speakers will be posted on EPA's Web site at <http://www.epa.gov/nsr>. A verbatim transcript and written statements will be included in the rulemaking docket.

A public hearing would provide interested parties the opportunity to present data, views, or arguments concerning issues addressed in this notice. The EPA may ask clarifying questions during the oral presentations, but would not respond to the presentations or comments at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at a public hearing.

#### E. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

- I. General Information
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  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132—Federalism
  - F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer Advancement Act
  - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  - K. Determination Under Section 307(d)
- IV. Statutory Authority

### II. This Action

On January 15, 2009, the EPA (“we”) issued a final rule amending our PSD and nonattainment NSR regulations implementing the definition of “modification” in the Clean Air Act (“CAA”) 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 resulting in a significant emission increase. The amendments retained the rule language for aggregation but interpreted that rule text to mean that sources and permitting authorities should combine emissions when activities are “substantially related.” The rule 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, please 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 307(d)(7)(B).<sup>1</sup> Under that CAA 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.

On February 13, 2009, we issued notices announcing the convening of a reconsideration proceeding in response to the NRDC petition and an administrative stay of the NSR Aggregation Amendments, which delayed the effective date of the NSR Aggregation Rule for 90 days from February 17, 2009 until May 18, 2009. See 74 FR 7193 and 74 FR 7284 (February 13, 2009). As noted above, our authority to delay the effective date of a rule solely under the Administrator's discretion is limited to three months. On occasion, however, we have found three months to be insufficient to complete the necessary steps in the reconsideration process. Therefore, when we have issued similar administrative stays in the past, it has often been our practice to also propose an additional extension of the stay of effectiveness through a rulemaking process. An additional extension enables us to take comment on issues that are in question and complete any revisions of the rule that become necessary as a result of the reconsideration process.

As with some of our past reconsiderations, we expect to take comment on a broad range of legal and policy issues as part of the NSR Aggregation Amendments reconsideration, and we are in the process of preparing the necessary comment solicitation to help focus commenters on issues of central relevance to our decision-making. Recognizing that these issues may be difficult and time consuming to evaluate, and given the expected high level of interest from stakeholders in commenting on these issues, we are proposing additional time to open these issues for review and comment.

Therefore, we propose to delay the effective date of the NSR Aggregation Amendments, FR Doc. E9-815, published in the **Federal Register** on January 15, 2009 (74 FR 2376), until

November 18, 2009. This delay would be for an additional six months, which we believe would provide a reasonable period of time to complete action on the reconsideration. As alternatives, we also solicit comment on longer periods for a delay of effectiveness: (1) until February 18, 2010 (nine additional months) or (2) May 18, 2010 (12 additional months).

Note that we are not taking comment at this time on any substantive issues from the NSR Aggregation Amendments. This notice simply proposes to further extend the effective date, so comments should be limited to the issue of whether and how long to extend the effective date of the rule. A separate **Federal Register** notice published in the near future will specifically solicit comment on the range of issues under reconsideration.

### III. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

#### B. Paperwork Reduction Act

This action does not impose any new information collection burden. We are not promulgating any new paperwork requirements (e.g., monitoring, reporting, recordkeeping) as part of this proposed action. However, the Office of Management and Budget ("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. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") generally requires an Agency to prepare a regulatory flexibility analysis of any regulation subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies 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 this proposal 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.); (2) A governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of these proposed revisions to the regulations on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposal will not impose any requirements on small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### D. Unfunded Mandates Reform Act

This action contains no Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The EPA has determined that these proposed regulation revisions contain no regulatory requirements that may significantly or uniquely affect small governments, including tribal governments because these regulations affect Federal agencies only.

#### 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" are 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."

This action does not have Federalism implications. It will not have substantial

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

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. This proposed rule, if made final, would delay the effective date of the NSR Aggregation Amendments and allow for sufficient time to conduct the reconsideration. Thus, Executive Order 13132 does not apply to these proposed regulation revisions.

In the spirit of Executive Order 13121 and consistent with EPA policy to promote communications between EPA and state and local governments, EPA is soliciting comments on this proposal from state and local officials.

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

This action does not have Tribal implications as specified in Executive Order 13175. No tribal government currently has an approved tribal implementation plan under the CAA to implement the NSR program, therefore the Federal government is currently the NSR reviewing authority in Indian country. Thus, tribal governments should not experience added burden from this proposed action. Thus, Executive Order 13175 does not apply.

EPA specifically solicits additional comment on the proposed revisions to the regulations from Tribal officials.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because this proposal is taking comment on delaying the effective date of the NSR Aggregation Amendments and allows for sufficient time to conduct the reconsideration. However, EPA solicits comments on whether the proposal would result in an adverse environmental effect that would have a disproportionate effect on children.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer 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 (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed revision is taking comment on delaying the effective date of the NSR Aggregation Amendments and allows for sufficient time to conduct the reconsideration. As such, it does not adversely affect the health or safety of minority or low income populations.

*K. Determination Under Section 307(d)*

Pursuant to sections 307(d)(1)(E) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to “such other actions as the Administrator may determine.”

**IV. 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**

*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: March 12, 2009.

**Lisa P. Jackson,**  
Administrator.

[FR Doc. E9–5996 Filed 3–17–09; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF HOMELAND SECURITY**

**48 CFR Parts 3009 and 3052**

[Docket No. DHS–2009–0017]

RIN 1601–AA55

**Prohibition on Federal Protective Service Guard Services Contracts With Business Concerns Owned, Controlled, or Operated by an Individual Convicted of a Felony [HSAR Case 2009–001]**

**AGENCY:** Department of Homeland Security (DHS).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DHS is proposing to amend the Homeland Security Acquisition Regulation (HSAR) to prohibit DHS from awarding a Federal Protective Service (FPS) contract for guard services to a business concern that is owned, controlled, or operated by an individual who has been convicted of a serious felony. The rule is necessary to implement the provisions of Public Law 110–356, the Federal Protective Service Guard Contracting Reform Act of 2008.

**DATES:** *Comment date:* Interested parties should submit written comments to the