(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: May 1, 2009.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9–11306 Filed 5–13–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2003–0064; FRL–8904–5]

RIN 2060–AP49

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

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on a rule that amends and delays the effective date for the rule addressing ''aggregation'' under the Prevention of Significant Deterioration (PSD) and the nonattainment New Source Review (nonattainment NSR) programs (collectively, ''NSR''). The ''NSR Aggregation Amendments'' were published in the **Federal Register** on January 15, 2009, and described when a source must combine 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. On March 18, 2009, EPA proposed an additional delay of the effective date and solicited comment on the duration of the additional delay.

By this rule, EPA is delaying the effective date of the NSR Aggregation Amendments for an additional 12 months, which will allow for sufficient time to conduct the reconsideration proceeding. The new effective date of the rule is May 18, 2010.

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), is further delayed to May 18, 2010.

ADDRESSES: *Docket:* The final rule, the petition for reconsideration, comments on the March 18, 2009 proposal, and all other documents in the record for the NSR Aggregation rulemaking are in Docket ID. No. EPA–HQ–OAR–2003–0064. All documents in the docket are listed in the *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 *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.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

B. How is this preamble organized?

The information presented in this preamble is organized as follows:

II. Background

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 (known as ''activities'') 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, NRDC submitted a petition for reconsideration of the NSR Aggregation Amendments as provided for in CAA 307(d)(7)(B).[1] 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

[1] John Walke, Natural Resources Defense Council, EPA–HQ–OAR–2003–0064–0116.1.

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.

Since we expect to take comment on a broad range of legal and policy issues as part of the NSR Aggregation Amendments reconsideration, on March 18, 2009 (74 FR 11509), we proposed to further delay the effective date of the NSR Aggregation Amendments until November 18, 2009. We also solicited comment on longer periods for a delay of effectiveness: (1) Until February 18, 2010, and (2) May 18, 2010.

III. Summary of Public Comments Received

We received five comments from interested parties on our March 18, 2009 proposal to delay the effective date of the NSR Aggregation Amendments. Most of the commenters requested that we not further delay the effective date of the rule after May 18, 2009. These commenters expressed concerns that sources need more clarity and certainty on the issue of aggregation, and leaving the NSR Aggregation Amendments in place during the reconsideration proceeding would provide greater clarity to sources even if we ultimately decide to change the rule.

While it is understandable that commenters may perceive a need for more clarity in the program, we are concerned that making effective a rule that may later change may actually result in more confusion for both sources and permitting authorities. We also are concerned that portions of the legal basis for the final rule did not undergo comment solicitation, so we would be remiss to let the rule become effective prior to letting the public comment fully on the basic authority for the rule. Furthermore, a few of the issues raised in the NRDC Petition demonstrate that there are aspects of the final rule that still cause confusion, such as whether states must adopt the new rule and whether SIPs must be amended. These issues were not adequately addressed in the final rule. An additional delay of effectiveness that allows us to address these defects is necessary and prudent.

One commenter claimed it would be inappropriate for EPA to use section 705 of the Administrative Procedures Act (APA) to further postpone the effective date of the rule. However, because we do not rely on that statutory provision for this extension notice, the question is not relevant to this rule.

This commenter also suggested that the January 21, 2009 memorandum from the Director of the Office of Management and Budget (OMB) created an outside limit of 60 days for reconsideration of rules published prior to January 20, 2009.[2] However, nothing in the OMB memorandum supersedes the procedural and substantive requirements of the CAA. For example, section 307(d) provides the public the procedural right to present oral testimony and a minimum period for parties to comment on the testimony. The time frame allowed by the statute would be difficult to reconcile with the period in the memorandum.

Another commenter stated we lack authority to extend the effective date more than 90 days under the specific provisions of CAA section 307(d). The commenter argues that we can only amend the effective date in a new ''substantive'' rulemaking. We disagree with the commenter's analysis of the statute.

First, the provision allowing for a three month stay of effectiveness of the rule is an authority that either a court or EPA may use at its discretion without notice or an opportunity for comment. While CAA section 307(d)(7)(B) provides that this type of a stay may not ''exceed three months,'' this limitation is best understood as applying to the plenary authority to grant a stay without notice and comment. There is nothing in this CAA provision indicating that it strips EPA of the authority to amend any provision it establishes through notice and comment rulemaking by a subsequent notice and comment rulemaking. *See National Cable & Telecomms. Ass'n* v. *Brand X Internet Servs.,* 125 S. Ct. 2688, 2700 (2005). That is the procedure we have undertaken in this action.

Second, the commenter recognizes that a new ''substantive'' rule following the rulemaking procedures of CAA section 307(d) could shift an effective date. We find no distinction in CAA section 307(d) between what the commenter terms a ''substantive'' amendment and an amendment modifying when the rule becomes effective, especially when such a rulemaking is completed before the original rule becomes effective. The commenter's interpretation of the statute would require as a matter of law the irrational result that EPA would have to allow a defective rule to nevertheless go into effect even if it could complete a rulemaking revising the effective date in time, or if it could not complete a potentially more complicated rulemaking amendment to address the rule's shortcomings in the same amount of time. However, EPA need not even have to find that a rule is defective before it can undertake notice and comment to revise any part of the rule, as long as the basis for the revisions is reasonable. Thus, like any other provision of a CAA section 307(d) rule, we are authorized to change the effective date of the final rule through rulemaking.

While most commenters were opposed to a further extension of the effective date of the NSR Aggregation Amendments, we note that one commenter concurred entirely with the objections raised in the NRDC petition and specifically pointed out a lack of tribal outreach in the development of the rule. The commenter requested a delay of three months to allow for tribal outreach, and a notice-and-comment rulemaking before a final action on aggregation takes effect. Since the issue of state, local, and tribal involvement under Executive Order 12866 will be addressed as part of our reconsideration proceeding, we will fully respond to this commenter's concern through our reconsideration.

IV. Additional Twelve Month Delay of Effectiveness

As noted above, we solicited comment on three potential periods of delay for the effective date of the NSR Aggregation Amendments. We now believe that allowing 12 additional months is more appropriate than a delay of six months, which was the preferred option at proposal, or nine months. This schedule allows for drafting and publishing a notice that focuses comment on specific issues to be reconsidered, provides a sufficient

[2] OMB Memorandum M–09–08, ''Implementation of Memorandum Concerning Regulatory Review'' (January 21, 2009). *See http://www.whitehouse.gov/omb/assets/agencyinformation_memoranda_2009_pdf/m09-08.pdf.*

opportunity for public comment on the reconsideration in accordance with the requirements of CAA section 307(d), and gives us an opportunity to evaluate and respond to such comments.

We note that, over the recent past, reconsideration of NSR rulemakings like the Equipment Replacement Provision required nearly a year between the notice opening the comment period for reconsideration and the final action on reconsideration. *See* 69 FR 40278 (July 1, 2004) (opening of comments) and 70 FR 33838 (June 10, 2005) (final action). Given the degree of complexity with the issues under review here, the likelihood of significant public interest in this reconsideration, and our experience from recent NSR reconsiderations, we believe the delay we are adopting today is consistent with a realistic and achievable schedule for the reconsideration. While it is possible that we may require less time to complete the reconsideration, we believe extending the effective date by a full 12 months is reasonable and prudent.

Section 553(d) of the APA, 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register.** EPA is issuing this final rule under section 307(d)(1) of the CAA, which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on May 14, 2009. APA section 553(d) provides an exception when the agency finds good cause exists for a period less than 30 days before effectiveness. We find good cause exists to make this rule effective upon publication because doing so alleviates any potential confusion and implementation difficulties that could arise were the NSR Aggregation Amendments to go into effect for a 30 day period and then be stayed during reconsideration or modified as a result of the reconsideration process.

The effective date of the NSR Aggregation Amendments, FR Doc. E9–815, published in the **Federal Register** on January 15, 2009 (74 FR 2376), is hereby delayed to May 18, 2010.

V. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

This final 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 final action does not impose any new information collection. However, OMB has previously approved the information collection requirements contained in the existing NSR 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 Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA 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 this final action on small entities, a ''small entity'' is defined as: (1) A small business as defined by the Small Business Administration's regulations at 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; 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 impacts of this final rule on small entities, I certify that this final action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This final action contains no Federal mandates 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. This final action will not increase the burden imposed upon reviewing authorities. Therefore, this final action is not subject to the requirements of sections 202 and 205 of the UMRA.

This final action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As described above, this final action does not impose any new requirements on small governments.

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.''

This final 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. This action simply stays the effective date of the January 15, 2009 rule for an additional 12 months, pending a reconsideration proceeding. Thus, Executive Order 13132 does not apply to this final action.

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

This final action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action simply stays the effective date of the January 15, 2009 rule for an additional 12 months, pending a reconsideration proceeding. Thus, tribal governments should not experience added burden from this final action, nor should their laws be affected with respect to implementation of this final action. Thus, Executive Order 13175 does not apply to this final action.

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

EPA interprets Executive Order 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 Executive Order has the potential to influence the regulation. This final action is not subject to Executive Order 13045 because it does not establish an

environmental standard intended to mitigate health or safety risks.

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

This final 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 and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 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.

This final action does not involve technical standards; therefore, EPA did not consider 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, February 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 final action 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. Therefore, Executive Order 12898 does not apply to this final action.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This final action is not a ''major rule'' as defined by 5 U.S.C. 804(2). Therefore, this final action will be effective on May 14, 2009.

L. Judicial Review

Under CAA section 307(b), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before July 13, 2009. Under CAA section 307(d)(7)(B), only those objections to the final rule that were raised with specificity during the period of public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

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

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, Incorporation by reference, Intergovernmental relations, Aggregation, Major modifications, Reporting and recordkeeping requirements.

Dated: May 8, 2009.

Lisa P. Jackson,

Administrator.

[FR Doc. E9–11271 Filed 5–13–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2 and 95

[ET Docket Nos. 06–135, 05–213 and 03–92, RM–11271; FCC 09–23]

Spectrum Requirements for Advanced Medical Technologies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document establishes a new Medical Device Radiocommunication Service (MedRadio Service) of the Commission's rules. This new service incorporates the existing Medical Implant Communications Service (MICS) ''core'' band at 402–405 MHz, and also includes two megahertz of newly designated spectrum in the adjacent ''wing'' bands at 401–402 MHz and 405–406 MHz. The MedRadio Service will accommodate the operation of body-worn as well as implanted medical devices, including those using either listen-before-talk (''LBT'') frequency monitoring or non-LBT spectrum access methods, in designated portions of the 401–406 MHz band.

DATES: Effective August 12, 2009.

FOR FURTHER INFORMATION CONTACT: Gary Thayer, (202) 418–2290, e-mail *Gary.Thayer@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* ET Docket Nos. 06–135, 05–213, and 03–92, RM–11271, FCC 09–23, adopted March 19, 2009, and released March 20, 2009. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th St., SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*