

except for claims over which the Board has original jurisdiction.

(c) *Remand for a Statement of the Case.* In cases before the Board in which a claimant has timely filed a Notice of Disagreement with a determination of the agency of original jurisdiction on a claim, but the record reflects that the agency of original jurisdiction has not subsequently granted the claim in full and has not furnished the claimant with a Statement of the Case, the Board shall remand the claim to the agency of original jurisdiction with instructions to prepare and issue a Statement of the Case in accordance with the provisions of subpart B of this part. A remand for a Statement of the Case is not required if the claimant, consistent with the withdrawal requirements of § 20.204 of this chapter, withdraws the Notice of Disagreement.

(d) *Exceptions.* A remand or referral to the agency of original jurisdiction is not necessary for any of the following purposes:

(1) Clarifying a procedural matter before the Board, including the appellant's choice of representative before the Board, the issues on appeal, or requests for a hearing before the Board;

(2) Considering law not already considered by the agency of original jurisdiction, including, but not limited to, statutes, regulations, and court decisions;

(3) Reviewing additional evidence received by the Board, if, pursuant to § 20.1304(c) of this chapter, the appellant or the appellant's representative waives the right to initial consideration by the agency of original jurisdiction, or if the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal;

(4) Requesting an opinion under § 20.901 of this chapter;

(5) Supplementing the record with a recognized medical treatise; or

(6) Considering a matter over which the Board has original jurisdiction.

(Authority: 38 U.S.C. 7102, 7103(c), 7104(a), 7105).

**PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE**

■ 3. The authority citation for part 20 continues to read as follows:

**Authority:** 38 U.S.C. 501(a) and as noted in specific sections.

**Subpart J—Action by the Board**

■ 4. Amend § 20.903 by:

- a. Revising the section heading.
- b. Revising paragraph (b).

The revisions read as follows:

**§ 20.903 Rule 903. Notification of evidence to be considered by the Board and opportunity for response.**

\* \* \* \* \*

(b) *If the Board supplements the record with a recognized medical treatise—*(1) *General.* If, pursuant to § 19.9(d)(5) of this chapter, the Board supplements the record with a recognized medical treatise, the Board will notify the appellant and his or her representative, if any, that the Board will consider such recognized medical treatise in the adjudication of the appeal. The notice from the Board will contain a copy of the relevant portions of the recognized medical treatise. The appellant will be given 60 days after the date of the notice described in this section to file a response, which may include the submission of relevant evidence or argument. The date the Board gives the notice will be presumed to be the same as the date of the notice letter for purposes of determining whether a response was timely filed.

(2) *Exception.* The notice described in paragraph (b)(1) of this section is not required if the Board uses a recognized medical treatise or medical dictionary for the limited purpose of defining a medical term and that definition is not material to the Board's disposition of the appeal.

■ 5. In § 20.1304, revise paragraph (b)(2) to read as follows:

**§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.**

\* \* \* \* \*

(b) \* \* \*

(2) *Exception.* The motion described in paragraph (b)(1) of this section is not required to submit evidence in response to a notice described in § 20.903 of this chapter.

\* \* \* \* \*

[FR Doc. 2011-7395 Filed 3-29-11; 8:45 am]

BILLING CODE 8320-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 51 and 52**

[EPA-HQ-OAR-2004-0014: FRL-9280-8]

RIN 2060-AQ73

**Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions; Interim Rule; Stay and Revisions**

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

**ACTION:** Interim rule; stay and revisions.

**SUMMARY:** EPA is taking an interim action to effectuate and extend a stay of the final rule entitled "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions" ("Fugitive Emissions Rule") published in the **Federal Register** on December 19, 2008. The Fugitive Emissions Rule under the Federal NSR program required that fugitive emissions be included in determining whether a physical or operational change results in a major modification only for sources in designated industries. EPA issued a stay of the Fugitive Emissions Rule on March 31, 2010, that was effective for 18 months through October 3, 2011. This action supersedes the stay and thereby corrects potential confusion caused by that stay. To effectuate a stay of the Fugitive Emissions Rule, this action clarifies the stay and the revisions of specific paragraphs in the NSR regulations that were affected by the Fugitive Emissions Rule. This action also extends the stay until EPA completes its reconsideration of the Fugitive Emissions Rule.

**DATES:** *Effective date:* This interim rule is effective March 30, 2011.

The administrative stay of provisions in 40 CFR 51.165, 51.166, Appendix S to part 51, and 40 CFR 52.21 published on March 31, 2010 (75 FR 16012) is lifted; and

The following Code of Federal Regulations sections are stayed indefinitely: 40 CFR 51.165(a)(1)(v)(G) and (a)(1)(vi)(C)(3); 51.166(b)(2)(v) and (b)(3)(iii)(d); Appendix S to Part 51, Paragraph II.A.5(vii); and 52.21(b)(2)(v) and (b)(3)(iii)(c). The EPA will publish a document in the **Federal Register** lifting this stay.

*Comment date:* Comments must be received on or before April 29, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-

OAR-2004-0014, by one of the following methods:

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

- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
- *Fax:* (202) 566-1741.
- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. 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 the applicable docket. 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://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.

*Docket:* 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, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. 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) 566-1742, and the telephone number for the Air Docket is (202) 566-1744.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Keller, Air Quality Policy Division, (C504-03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number (919) 541-5339; fax number (919) 541-5509; or e-mail address: [keller.peter@epa.gov](mailto:keller.peter@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. The majority of sources potentially affected are expected to be in the following groups.

Industry group	SIC <sup>a</sup>	NAICS <sup>b</sup>
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
Pharmaceuticals .....	283	325411, 325412, 325413, 325414
Mining .....	211, 212, 213	21
Agriculture, Fishing and Hunting .....	111, 112, 113, 115	11

<sup>a</sup> Standard Industrial Classification

<sup>b</sup> North American Industry Classification System.

Entities potentially affected by this action also include state, local, and tribal governments.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit information containing CBI to EPA

through <http://www.regulations.gov> or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404-02), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, Attention: Docket

ID EPA-HQ-OAR-2004-0014. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in 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 as 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 your 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.

- 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 interim rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this interim rule will be posted in the regulations and standards section of our NSR home page located at <http://www.epa.gov/nsr>.

*D. How is this preamble organized?*

#### I. General Information

A. Does this action apply to me?

B. What should I consider as I prepare my comments for EPA?

C. Where can I get a copy of this document and other related information?

D. How is this preamble organized?

#### II. Background Information

#### III. This Action

A. Why is EPA staying, reinstating, or revising, as appropriate, the regulatory text in specific paragraphs affected by the Fugitive Emissions Rule?

B. Why is EPA issuing an interim rule?

C. What specific revisions are being made?

#### IV. Fugitive Emissions Rule Reconsideration

#### V. Statutory and Executive Order Reviews

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 Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. National Technology Transfer and Advancement Act

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

K. Congressional Review Act

#### VI. Statutory Authority

### II. Background Information

On December 19, 2008, EPA (“we”) issued a final rule revising the requirements of the major NSR programs regarding the treatment of fugitive emissions (“Fugitive Emissions Rule”) 73 FR 77882. The final rule required fugitive emissions to be included in determining whether a physical or operational change results in a major modification only for sources in industries that have been designated through rulemaking under section 302(j) of the Clean Air Act (Act or CAA). Previously, EPA rules required that fugitive emissions be included in major modification applicability determinations for all source categories. The final rule amended all portions of the major NSR program regulations: Permit requirements, the PSD program, and the emission offset interpretive ruling.

On February 17, 2009, the Natural Resources Defense Council (NRDC) submitted a petition for reconsideration of the December 2008 final rule as provided for in CAA 307(d)(7)(B).<sup>1</sup>

On April 24, 2009, we responded to the February 17, 2009, petition by letter indicating that we were convening a reconsideration proceeding for the December 2008 rule on inclusion of fugitive emissions challenged in the petition and granting a 3-month administrative stay of the rule contained in the federal NSR program at 40 CFR parts 51 and 52. The letter also indicated that we would publish a notice of proposed rulemaking “in the near future” to address the specific

issues for which we were granting reconsideration.<sup>2</sup>

The initial 3-month administrative stay of the Fugitive Emissions Rule became effective on September 30, 2009. See 74 FR 50115. An interim final rule extending the stay for an additional 3 months became effective on December 31, 2009. See 74 FR 65692. An additional 18 month stay was finalized on March 31, 2010, and ends on October 3, 2011. See 75 FR 16012. That stay was put in place to allow sufficient time for EPA to propose, take public comment on, and issue a final action concerning the inclusion of fugitive emissions in the Federal NSR program.

### III. This Action

*A. Why is EPA staying, reinstating, or revising, as appropriate, the regulatory text in specific paragraphs affected by the Fugitive Emissions Rule?*

The initial stay of the Fugitive Emissions Rule, put in place on September 30, 2009, may have caused confusion as to the scope of the stay. In staying the Fugitive Emissions Rule, EPA reinstated the NSR regulations as they existed prior to the Fugitive Emissions Rule. In particular, we stated: “To effectuate this stay of the December 19, 2008, rule, we are reinstating previous provisions on a temporary basis.” See 74 FR at 50115–16. In several cases, however, paragraphs of the affected regulations in 40 CFR 51.165, 40 CFR 51.166, 40 CFR 51 Appendix S, and 40 CFR 52.21 appeared to be stayed in their entirety rather than amended to undo the changes made by the Fugitive Emissions Rule as intended. The subsequent extensions of the stay used the same terms as the stay published on September 30, 2009, and accordingly did not correct the ambiguity created by the original promulgation of the stay. This action clarifies the regulations to accurately reflect EPA’s intent to revert back to the regulation text that existed prior to the Fugitive Emissions Rule amendments to the Federal NSR regulations.

*B. Why is EPA issuing an interim rule?*

We are issuing an interim rule to effectuate a stay of the Fugitive Emissions Rule. This interim rule supersedes the stay issued on March 31, 2010, and thereby corrects ambiguity contained in that stay. EPA is using the “good cause” exemption under the Administrative Procedure Act (APA) to take the actions set forth in this interim rule without prior notice and comment. See 5 U.S.C. 553(b)(3)(B). Section 553(b)

<sup>1</sup> John Walke, NRDC, EPA–HQ–OAR–2004–0014–0060.

<sup>2</sup> Lisa Jackson, US EPA, EPA–HQ–OAR–2004–0014–0062.

of the APA generally requires that any rule to which it applies be issued only after the public has received notice of, and had an opportunity to comment on, the proposed rule. However, section 553(b)(3)(B) exempts from those requirements any rule for which the issuing agency for good cause finds that providing prior notice and comment would be impracticable, unnecessary, or contrary to the public interest. Thus, any rule for which EPA makes such a finding is exempt from the notice and comment requirements of section 553(b).

We believe that the circumstances here provide good cause to take the actions set forth in this interim rule without prior notice and comment, because providing prior notice and comment would be unnecessary and contrary to the public interest.

With this action, EPA is simply staying the provisions of the Fugitive Emissions Rule consistent with our original intent, which we believe was broadly understood. We believe that soliciting public comment on this interim rule prior to making it effective would be contrary to the public interest because it is in the public interest to correct the ambiguity contained in the current stay as expeditiously as possible to avoid potential confusion regarding the regulatory text. The NSR program is a vital component of the Act's regime for protecting public health, and it is in the public's interest that the requirements of the program be clear and unambiguous.

EPA is also using the APA's good cause exception to make this interim rule immediately effective. *See* 5 U.S.C. 553(d)(3). Section 553(d) of the APA generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, section 553(d)(3) provides that if the issuing agency has made a finding of good cause and has published its reasoning with the rule, the rule may take effect earlier. EPA has determined that good cause exists to stay, reinstate, and revise, as appropriate, certain paragraphs in 40 CFR parts 51 and 52 by interim rule without prior notice and comment, because prior notice and comment would be unnecessary and contrary to the public interest for the reasons stated above. Based on this determination, EPA is making this interim rule effective immediately.

Notwithstanding EPA's "good cause" finding, we are providing a 30-day public comment period for this interim rule, and upon reviewing and considering comments received, we will issue a final rule either affirming the

interim rule or affirming the interim rule with revisions.

#### *C. What specific revisions are being made?*

We are issuing this interim rule to:

- Stay the following paragraphs: 40 CFR 51.165(a)(1)(v)(G) and (a)(1)(vi)(C)(3), 40 CFR 51.166(b)(2)(v) and (b)(3)(iii)(d), 40 CFR 51 Appendix S II.A.5(vii), and 40 CFR 52.21 (b)(2)(v) and (b)(3)(iii)(c);
- Reinstate the following paragraphs: 40 CFR 51.165(a)(4), 40 CFR 51.166(i)(1)(ii), 40 CFR 51 Appendix S II.F, and 40 CFR 52.21(i)(1)(vii); and
- Revise the following paragraphs to revert back to the regulatory text that existed prior to the Fugitive Emissions Rule amendments: 40 CFR 51.165(a)(1)(ix), (a)(1)(xxviii)(B)(2), (a)(1)(xxviii)(B)(4), (a)(1)(xxxv)(A)(1), (a)(1)(xxxv)(B)(1), (a)(1)(xxxv)(C), (a)(1)(xxxv)(D), (a)(2)(ii)(B), (a)(6)(iii), (a)(6)(iv), and (f)(4)(i)(D); 40 CFR 51.166(a)(7)(iv)(b), (b)(3)(iii)(c), (b)(20), (b)(40)(ii)(b), (b)(40)(ii)(d), (b)(47)(i)(a), (b)(47)(ii)(a), (b)(47)(iii), (b)(47)(iv), (r)(6)(iii), (r)(6)(iv), and (w)(4)(i)(d); 40 CFR 51 Appendix S II.A.6(iii), II.A.9, II.A.24(ii)(b), II.A.24(ii)(d), II.A.30(i)(a), II.A.30(ii)(a), II.A.30(iii), II.A.30(iv), IV.I.1(ii), IV.J.3, IV.J.4, and IV.K.4(i)(d); and 40 CFR 52.21(a)(2)(iv)(b), (b)(3)(iii)(b), (b)(20), (b)(41)(ii)(b), (b)(41)(ii)(d), (b)(48)(i)(a), (b)(48)(ii)(a), (b)(48)(iii), (b)(48)(iv), (r)(6)(iii), (r)(6)(iv), and (aa)(4)(i)(d).

The overall effect of this action is to revert the treatment of fugitive emissions in applicability determinations to the approach that applied prior to the Fugitive Emissions Rule on an interim basis, while EPA completes the reconsideration.

#### **IV. Fugitive Emissions Rule Reconsideration**

Following the public comment period, EPA will issue a final rule either affirming the interim rule or affirming the interim rule with changes. The final rule will be in effect until EPA completes its reconsideration of the Fugitive Emissions Rule. We intend to propose and finalize a rule based on the results of the reconsideration by October 4, 2012.

#### **V. Statutory and Executive Order Reviews**

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

This action is not a "significant regulatory action" under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), because it does not raise novel legal or policy issues. Accordingly, this

action is not subject to review under EO 12866.

##### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action only corrects inadvertent errors in the existing stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions and further stays the regulations until EPA completes its reconsideration.

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*

This interim rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because, although the rule is subject to the APA, the Agency has invoked the "good cause" exemption under 5 U.S.C. 553(b), therefore it is not subject to the notice and comment requirement.

##### *D. Unfunded Mandates Reform Act*

This 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 action only corrects inadvertent errors in the existing stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions and further stays the regulations until EPA completes its reconsideration. Therefore, this action is not subject to the requirements of sections 202 or 205 of 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.

*E. Executive Order 13132: Federalism*

This 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 EO 13132. This action only corrects inadvertent errors in the existing stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions and further stays the regulations until EPA completes its reconsideration. Thus, EO 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in EO 13175 (65 FR 67249, November 9, 2000). This action will not impose any new obligations or enforceable duties on tribal governments. Thus, EO 13175 does not apply to this action.

*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 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 action is not subject to EO 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 (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 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, 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 interim rule will not have disproportionately high and adverse human health or environmental effects on minority or low income populations because it only corrects inadvertent errors in the existing stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions and further stays the regulations until EPA completes its reconsideration.

*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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement, 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of March 30, 2011. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal**

**Register.** This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**VI. Statutory Authority**

The statutory authority for this action is provided by section 301(a) of the CAA as amended (42 U.S.C. 7601(a)).

**List of Subjects***40 CFR Part 51*

Administrative practices and procedures, Air pollution control, Carbon monoxide, Fugitive emissions, Intergovernmental relation, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

*40 CFR Part 52*

Administrative practices and procedures, Air pollution control, Carbon monoxide, Fugitive emissions, Intergovernmental relation, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

Dated: March 10, 2011.

**Lisa P. Jackson,**  
*Administrator.*

For the reasons stated in the preamble, 40 CFR parts 51 and 52 are amended as follows:

**PART 51—[AMENDED]**

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401—7671q.

■ 2. Section 51.165 is amended as follows:

- a. The stay of § 51.165(a)(1)(v)(G), (a)(1)(vi)(C)(3), (a)(1)(ix), (a)(1)(xxviii)(B)(2), (a)(1)(xxviii)(B)(4), (a)(1)(xxxv)(A)(1), (a)(1)(xxxv)(B)(1), (a)(1)(xxxv)(C), (a)(1)(xxxv)(D), (a)(2)(ii)(B), (a)(6)(iii), (a)(6)(iv), and (f)(4)(i)(D), published on March 31, 2010 (75 FR 16012), is lifted.
- b. Paragraphs (a)(1)(ix), (a)(1)(xxviii)(B)(2), (a)(1)(xxviii)(B)(4), (a)(1)(xxxv)(A)(1), (a)(1)(xxxv)(B)(1), (a)(1)(xxxv)(C), and (a)(1)(xxxv)(D) are revised.
- c. Paragraph (a)(2)(ii)(B) is revised.
- d. Temporary paragraph (a)(4), is removed.
- e. A new paragraph (a)(4), is added.
- f. Paragraphs (a)(6)(iii) and (a)(6)(iv) are revised.
- g. Paragraph (f)(4)(i)(D) is revised.
- h. Paragraphs (a)(1)(v)(G) and (a)(1)(vi)(C)(3) are stayed.

**§ 51.165 Permit requirements.**

(a) \* \* \*

(1) \* \* \*

(ix) *Fugitive emissions* means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

\* \* \* \* \*

(xxviii) \* \* \*

(B) \* \* \*

(2) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

\* \* \* \* \*

(4) In lieu of using the method set out in paragraphs (a)(1)(xxviii)(B)(1) through (3) of this section, may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (a)(1)(iii) of this section.

\* \* \* \* \*

(xxxv) \* \* \*

(A) \* \* \*

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

\* \* \* \* \*

(B) \* \* \*

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

\* \* \* \* \*

(C) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(D) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (a)(1)(xxxv)(A) of this section, for other existing emissions units in accordance with the procedures contained in paragraph (a)(1)(xxxv)(B) of this section, and for a new emissions unit in accordance with the procedures contained in paragraph (a)(1)(xxxv)(C) of this section.

\* \* \* \* \*

(2) \* \* \*

(ii) \* \* \*

(B) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified,

according to paragraphs (a)(2)(ii)(C) through (F) of this section. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in paragraph (a)(1)(vi) of this section. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

\* \* \* \* \*

(4) Each plan may provide that the provisions of this paragraph do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or citric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

\* \* \* \* \*

(6) \* \* \*

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in paragraph (a)(6)(i)(B) of this section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(iv) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority within 60 days after the end of each year during which records must be generated under paragraph (a)(6)(iii) of this section setting out the unit's annual emissions during the year that preceded submission of the report.

\* \* \* \* \*

(f) \* \* \*

(4) \* \* \*

(i) \* \* \*

(D) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

\* \* \* \* \*

■ 3. Section 51.166 is amended as follows:

■ a. The stay of § 51.166(a)(7)(iv)(b), (b)(2)(v), (b)(3)(iii)(c), (b)(3)(iii)(d), (b)(20), (b)(40)(ii)(b), (b)(40)(ii)(d), (b)(47)(i)(a), (b)(47)(ii)(a), (b)(47)(iii), (b)(47)(iv), (r)(6)(iii) and (r)(6)(iv), and (w)(4)(i)(d), published on March 31, 2010 (75 FR 16012), is lifted.

■ b. Paragraph (a)(7)(iv)(b) is revised.

■ c. Paragraphs (b)(3)(iii)(c), (b)(20), (b)(40)(ii)(b), (b)(40)(ii)(d), (b)(47)(i)(a), (b)(47)(iii), and (b)(47)(iv) are revised.

■ d. Temporary paragraph (i)(1)(ii) is removed.

■ e. A new paragraph (i)(1)(ii) is added.

■ f. Paragraphs (r)(6)(iii) and (r)(6)(iv) are revised.

■ g. Paragraph (w)(4)(i)(d) is revised.

■ h. Paragraphs (b)(2)(v) and (b)(3)(iii)(d) are stayed.

§ 51.166 Prevention of significant deterioration of air quality.

(a) \* \* \*
(7) \* \* \*
(iv) \* \* \*
(b) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (a)(7)(iv)(c) through (f) of this section. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in paragraph (b)(3) of this section. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(b) \* \* \*
(3) \* \* \*
(iii) \* \* \*
(c) The increase or decrease in emissions did not occur at a Clean Unit, except as provided in paragraphs (t)(8) and (u)(10) of this section.

(20) Fugitive emissions means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(40) \* \* \*
(ii) \* \* \*
(b) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(d) In lieu of using the method set out in paragraphs (b)(40)(ii)(a) through (c) of this section, may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (b)(4) of this section.

(47) \* \* \*
(i) \* \* \*
(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(ii) \* \* \*
(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(iii) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(iv) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (b)(47)(i) of this section, for other existing emissions units in accordance with the procedures contained in paragraph (b)(47)(ii) of this section, and for a new emissions unit in accordance with the procedures contained in paragraph (b)(47)(iii) of this section.

(i) \* \* \*
(1) \* \* \*
(ii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and such source does not belong to any of the following categories:

- (a) Coal cleaning plants (with thermal dryers);
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum ore reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);

- (p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act; or

(r) \* \* \*
(6) \* \* \*
(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph (r)(6)(i)(b) of this section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(iv) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority within 60 days after the end of each year during which records must be generated under paragraph (r)(6)(iii) of this section setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(w) \* \* \*
(4) \* \* \*
(i) \* \* \*

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

- 4. Appendix S. to Part 51 is amended as follows:
■ a. The stay of appendix S, paragraphs II.A.5(vii), II.A.6(iii), II.A.9, II.A.24(ii)(b), II.A.24(ii)(d), II.A.30(i)(a), II.A.30(ii)(a), II.A.30(iii), II.A.30(iv), IV.I.1(ii), IV.J.3, IV.J.4, and IV.K.4(i)(d) published on March 31, 2010 (75 FR 16012) is lifted.
■ b. Paragraphs II.A.6(iii), II.A.9, II.A.24(ii)(b), II.A.24(ii)(d), II.A.30(i)(a), II.A.30(ii)(a), II.A.30(iii), and II.A.30(iv) are revised.
■ c. Temporary paragraph II.F is removed.
■ d. A new paragraph II.F is added.

- e. Paragraphs IV.I.1(ii), IV.J.3, IV.J.4, and IV.K.4(i)(d) are revised.
- f. Paragraph II.A.5(vii) is stayed.

### Appendix S to Part 51—Emission Offset Interpretative Ruling

\* \* \* \* \*

II. \* \* \*  
A. \* \* \*  
6. \* \* \*

(iii) An increase or decrease in actual emissions is creditable only if the reviewing authority has not relied on it in issuing a permit for the source under this Ruling, which permit is in effect when the increase in actual emissions from the particular change occurs.

\* \* \* \* \*

9. *Fugitive emissions* means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

\* \* \* \* \*

24. \* \* \*  
(i) \* \* \*

(b) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

\* \* \* \* \*

(d) In lieu of using the method set out in paragraphs II.A.24(ii)(a) through (c) of this Ruling, may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph II.A.3 of this Ruling.

\* \* \* \* \*

30. \* \* \*  
(i) \* \* \*

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

\* \* \* \* \*

(ii) \* \* \*

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

\* \* \* \* \*

(iii) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(iv) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph II.A.30(i) of this Ruling, for other existing emissions units in accordance with the procedures contained in paragraph II.A.30(ii) of this Ruling, and for a new emissions unit in accordance with the procedures contained in paragraph II.A.30(iii) of this Ruling.

\* \* \* \* \*

F. *Fugitive emission sources.* Section IV.A. of this Ruling shall not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are

considered in calculating the potential to emit of the stationary source or modification and such source does not belong to any of the following categories:

- (1) Coal cleaning plants (with thermal dryers);
- (2) Kraft pulp mills;
- (3) Portland cement plants;
- (4) Primary zinc smelters;
- (5) Iron and steel mills;
- (6) Primary aluminum ore reduction plants;
- (7) Primary copper smelters;
- (8) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (9) Hydrofluoric, sulfuric, or nitric acid plants;
- (10) Petroleum refineries;
- (11) Lime plants;
- (12) Phosphate rock processing plants;
- (13) Coke oven batteries;
- (14) Sulfur recovery plants;
- (15) Carbon black plants (furnace process);
- (16) Primary lead smelters;
- (17) Fuel conversion plants;
- (18) Sintering plants;
- (19) Secondary metal production plants;
- (20) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(23) Taconite ore processing plants;

(24) Glass fiber processing plants;

(25) Charcoal production plants;

(26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(27) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

\* \* \* \* \*

IV. \* \* \*

I. \* \* \*

1. \* \* \*

(ii) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.*, the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs IV.I.1(iii) through (v) of this Ruling. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.*, the second step of the process) is contained in the definition in paragraph II.A.6 of this Ruling. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

\* \* \* \* \*

J. \* \* \*

3. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in paragraph IV.J.1(ii) of this

Ruling; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

4. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority within 60 days after the end of each year, during which records must be generated under paragraph IV.J.3 of this Ruling setting out the unit's annual emissions during the year that preceded submission of the report.

\* \* \* \* \*

K. \* \* \*

4. \* \* \*

(i) \* \* \*

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

\* \* \* \* \*

### PART 52—[AMENDED]

- 5. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

- 6. Section 52.21 is amended as follows:

- a. The stay of § 52.21 (a)(2)(iv)(b), (b)(2)(v), (b)(3)(iii)(b), (b)(3)(iii)(c), (b)(20), (b)(41)(ii)(b), (b)(41)(ii)(d), (b)(48)(i)(a), (b)(48)(ii)(a), (b)(48)(iii), (b)(48)(iv), (r)(6)(iii), (r)(6)(iv), and (aa)(4)(i)(d), published on March 31, 2010 (75 FR 16012), is lifted.

- b. Paragraph (a)(2)(iv)(b) is revised.

- c. Paragraphs (b)(3)(iii)(b), (b)(20), (b)(41)(ii)(b), (b)(41)(ii)(d), (b)(48)(i)(a), (b)(48)(ii)(a), (b)(48)(iii), and (b)(48)(iv) are revised.

- d. Temporary paragraph (i)(1)(vii) is removed.

- e. A new paragraph (i)(1)(vii) is added.

- f. Paragraphs (r)(6)(iii) and (r)(6)(iv) are revised.

- g. Paragraph (aa)(4)(i)(d) is revised.

- h. Paragraphs (b)(2)(v) and (b)(3)(iii)(c) are stayed.

#### § 52.21 Prevention of significant deterioration of air quality.

(a) \* \* \*

(2) \* \* \*

(iv) \* \* \*

(b) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.*, the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (a)(2)(iv)(c) through (f) of this section. The procedure for calculating (before



beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in paragraph (b)(3) of this section. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

\* \* \* \* \*

- (b) \* \* \*
(3) \* \* \*
(iii) \* \* \*

(b) The increase or decrease in emissions did not occur at a Clean Unit except as provided in paragraphs (x)(8) and (y)(10) of this section.

\* \* \* \* \*

(20) Fugitive emissions means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

\* \* \* \* \*

- (41) \* \* \*
(ii) \* \* \*

(b) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

\* \* \* \* \*

(d) In lieu of using the method set out in paragraphs (a)(41)(ii)(a) through (c) of this section, may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (b)(4) of this section.

\* \* \* \* \*

- (48) \* \* \*
(i) \* \* \*

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

\* \* \* \* \*

- (ii) \* \* \*

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

\* \* \* \* \*

(iii) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(iv) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (b)(48)(i) of this section, for

other existing emissions units in accordance with the procedures contained in paragraph (b)(48)(ii) of this section, and for a new emissions unit in accordance with the procedures contained in paragraph (b)(48)(iii) of this section.

\* \* \* \* \*

- (i) \* \* \*
(1) \* \* \*

(vii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

- (a) Coal cleaning plants (with thermal dryers);
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum ore reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);

- (p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;

(t) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

- (w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act; or

\* \* \* \* \*

(r) \* \* \*

(6) \* \* \*

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph (r)(6)(i)(b) of this section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit that regulated NSR pollutant at such emissions unit.

(iv) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Administrator within 60 days after the end of each year during which records must be generated under paragraph (r)(6)(iii) of this section setting out the unit's annual emissions during the calendar year that preceded submission of the report.

\* \* \* \* \*

(aa) \* \* \*

(4) \* \* \*

(i) \* \* \*

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

\* \* \* \* \*

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2010-0097; FRL-8867-7]

Sodium Ferric Ethylenediaminetetraacetate; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of sodium ferric ethylenediaminetetraacetate (EDTA) in or on all food commodities when applied as a molluscicide and used in accordance with good agricultural practices. W. Neudorff GmbH KG submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from