

flashing light, or other means, the operator of a vessel must proceed as directed.

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

Dated: November 19, 2009.

T.H. Farris,

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

[FR Doc. E9-29489 Filed 12-10-09; 8:45 am]

BILLING CODE 9110-04-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 51 and 52**

[EPA-HQ-OAR-2004-0014; FRL-9089-4]

RIN 2060-AP73

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

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

**ACTION:** Interim final rule; Stay.

**SUMMARY:** EPA is making an interim final determination to provide an additional stay of the regulations concerning the inclusion of fugitive emissions.

**DATES:** The amendments to 40 CFR parts 51 and 52 in this rule are effective from December 31, 2009 through March 31, 2010. Effective December 31, 2009, the following CFR sections are administratively stayed until March 31, 2010: 40 CFR 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); 40 CFR 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); 40 CFR part 51, 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); and 40 CFR 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).

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2004-0014. All documents in the docket are listed in the Federal Docket Management System index at <http://www.regulations.gov>. Although listed in the index, some

information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 Air and Radiation Docket, 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 is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Wheeler, Air Quality Policy Division, (C504-03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number (919) 541-9771; fax number (919) 541-5509; or e-mail address: [wheeler.carrie@epa.gov](mailto:wheeler.carrie@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Regulated entities.* 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.

*World Wide Web.* In addition to being available in the docket, an electronic copy of this final rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted in the regulations and standards section of our New Source Review (NSR) home page located at <http://www.epa.gov/nsr>.

*Organization of this Document.* The following outline is provided to aid in locating information in this preamble.

- I. Background Information
- II. What Action Is EPA Taking?
- III. 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  
IV. Statutory Authority

## I. Background Information

On December 19, 2008, the EPA (“we”) issued a final rule revising our 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 (CAA). 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 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 inclusion of fugitive emissions challenged in the petition and granting a 3-month administrative stay of the rule contained in the federal Prevention of Significant Deterioration (PSD) 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 are granting reconsideration.<sup>2</sup>

The administrative stay of the Fugitive Emissions Rule became effective on September 30, 2009. See 74 FR 50115, FR Doc. E9–23503. As noted above, our authority under section 307(d)(7)(B) to stay a rule or portion thereof solely under the Administrator’s discretion is limited to 3 months.

## II. What Action Is EPA Taking?

We are making an interim final determination to provide an additional stay for 3 months. The 3-month stay that began on September 30, 2009 expires on December 30, 2009. At that time, facilities will be required to comply with the final rule as published [73 FR 77882] unless an additional stay is set in place. EPA intends to publish a notice in the near future that will propose an additional stay of the Fugitive Emissions during the time

period while EPA reconsiders the rule. Since that proposed rule has not yet published, any resulting final action that EPA takes will likely occur after December 30, 2009. EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity to comment before this action takes effect (5 U.S.C. 553(b)(3)).

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has stated in the reconsideration and stay notices (74 FR 188) the reason for granting the 3-month stay. As this reason remains valid, we believe it is still appropriate for a stay to be in effect until we have reached a final decision on the reconsideration. The initial stay expires on December 30, 2009, and EPA does not believe it can complete notice and comment rulemaking to provide an additional stay before that date. It is not in the public’s best interest to require compliance with the rules as published during the gap between the two dates. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to provide an additional stay while the public has an opportunity to comment on the upcoming proposed action. EPA anticipates completing that action by March 31, 2010.

## III. Statutory and Executive Order Reviews

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

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

### B. Paperwork Reduction Act

This action does not impose an 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 provides an additional stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions.

However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 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 final 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 does not contain a 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, and tribal governments, in the aggregate, or the private sector. This action only provides for an additional stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions. Thus, this rule is not subject to the requirements of sections 202 or 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. This action only provides an additional stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions and does not impose any additional enforceable duty.

### 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 provides an additional stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions. 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

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

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

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 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 action is not subject to Executive Order 13045 because this action only provides an additional stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions.

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

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action only provides an additional stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions.

*I. National Technology Transfer and 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 action 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 action will not have a disproportionately high and adverse human health or environmental effects on minority or low income populations because it only provides an additional stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions.

*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 December 31, 2009. 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).

**IV. 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, Incorporation by reference, Intergovernmental relation, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

Dated: November 30, 2009.

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

■ For the reasons discussed in the preamble, the EPA amends 40 CFR parts 51 and 52 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.

**§ 51.165 [Amended]**

■ 2. Effective December 31, 2009, 40 CFR 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) are stayed until March 31, 2010.

■ 3. Effective December 31, 2009 through March 31, 2010, amend 40 CFR 51.165 to add paragraph (a)(4) to read as follows:

**§ 51.165 Permit requirements.**

(a) \* \* \*

(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 emission 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.

\* \* \* \* \*

**§ 51.166 [Amended]**

- 4. Effective December 31, 2009, 40 CFR 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) are stayed until March 31, 2010.
- 5. Effective December 31, 2009 through March 31, 2010, amend 40 CFR 51.166 to add paragraph (i)(l)(ii) to read as follows:

**§ 51.166 Prevention of significant deterioration of air quality.**

\* \* \* \* \*

- (j) \* \* \*
- (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 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

\* \* \* \* \*

**Appendix S to 40 CFR Part 51 [Amended]**

- 6. Effective December 31, 2009, 40 CFR part 51, 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) are stayed until March 31, 2010.
- 7. Effective December 31, 2009 through March 31, 2010, amend Appendix S to part 51 to add II.F to read as follows:

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

\* \* \* \* \*

II. \* \* \*  
 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 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.

\* \* \* \* \*

**PART 52—[AMENDED]**

- 8. The authority citation for part 52 continues to read as follows:  
 Authority: 42 U.S.C. 7401 *et seq.*

**§ 52.21 [Amended]**

- 9. Effective December 31, 2009, 40 CFR 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) are stayed until March 31, 2010.
- 10. Effective December 31, 2009 through March 31, 2010, amend 40 CFR 52.21 to add (i)(l)(vii) to read as follows:

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

\* \* \* \* \*

- (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

\* \* \* \* \*

[FR Doc. E9-29068 Filed 12-10-09; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 172

[Docket No. PHMSA-2009-0238 (HM-224G)]

RIN 2137-AE49

#### Hazardous Materials: Chemical Oxygen Generators

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA).

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** PHMSA is confirming the effective date of its direct final rule, published under Docket No. PHMSA-2009-0238 (HM-224G) on October 15, 2009, to amend the Hazardous Materials Regulations by revising the quantity limitation from 25 kg “gross” to 25 kg “net” for packages of chemical oxygen generators transported aboard cargo aircraft only. The direct final rule stated that it would become effective on November 16, 2009 unless an adverse comment or notice of intent to file an adverse comment was received by November 16, 2009. PHMSA did not receive any adverse comments or notice of intent to file an adverse comment to its October 15, 2009 direct final rule.

**DATES:** The November 16, 2009 effective date of the direct final rule published on October 15, 2009 (74 FR 52896), is confirmed.

**FOR FURTHER INFORMATION CONTACT:** T. Glenn Foster, (202) 366-8553, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Standards, 1200 New Jersey Avenue, SE., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

On January 31, 2007, PHMSA issued a final rule under Docket No. RSPA-04-17664 (HM-224B) to enhance the safety standards for transportation by air of compressed oxygen, other oxidizing gases, and chemical oxygen generators (72 FR 4442). Specifically, the final rule amended the HMR to require cylinders of compressed oxygen and chemical oxygen generators to be transported in an outer packaging that: (1) Meets the same flame penetration resistance standards as required for cargo compartment sidewalls and ceiling panels in transport category airplanes; and (2) provides certain thermal protection capabilities so as to retain its contents during an otherwise controllable cargo compartment fire.

In response to a petition, PHMSA determined it was necessary to revise the quantity limitation for packages of chemical oxygen generators transported aboard cargo aircraft only from 25 kilograms “gross” to 25 kilograms “net,” and published a direct final rule in the **Federal Register** on October 15, 2009.

PHMSA stated in the direct final rule that it would consider as adverse comments only those comments that explain why a rule would be inappropriate, or would be ineffective or unacceptable without a change. PHMSA did not receive an adverse comment or notice of intent to file an adverse comment in response to the direct final rule. In this present notice, PHMSA is confirming that the effective date for the October 15, 2009 direct final rule is November 16, 2009.

#### List of Subjects in 49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 7, 2009 under authority delegated in 49 CFR part 106.

**Cynthia L. Quarterman,**  
Administrator.

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