

Port Lake Michigan will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Lake Michigan will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended.

(e) *Exemption*. Public vessels as defined in paragraph (b) of this section are exempt from the requirements in this section.

(f) *Wavier*. For any vessel, the Captain of the Port Lake Michigan or a designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

Dated: June 6, 2007.

Bruce C. Jones,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA-HQ-OAR-2001-0004; FRL-8324-6]

RIN 2060-AN92

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Removal of Vacated Elements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is amending its regulations to eliminate the pollution control project (PCP) and clean unit (CU) provisions included in its December 31, 2002 rulemaking entitled "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Baseline Emissions Determination, Actual-to-future-actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects." This final rule conforms the regulations to the decision by the U.S. Court of Appeals for the D.C. Circuit, *New York v. EPA*, 413 F.3d 3 (D.C. Cir. 2005), vacating the PCP and CU provisions. This action is exempt from notice-and-comment rulemaking because it is ministerial in nature.

DATES: This final rule is effective on June 13, 2007.

ADDRESSES: The EPA has established a docket for this action under Docket ID

No. EPA-HQ-OAR-2001-0004. All documents in the docket are listed on the www.regulations.gov Web site. 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 www.regulations.gov or in hard copy at the EPA Docket Center (Air Docket), EPA/DC, EPA West, 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 Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. David Painter, Office of Air Quality Planning and Standards, (C504-03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5515, fax number (919) 541-5509, e-mail: painter.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Regulation Apply to Me?

Entities potentially affected by this final action include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups.

Industry group	SIC ^a	NAICS ^b
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122.
Petroleum Refining	291	32411.
Chemical Processes	281	325181, 32512, 325131, 325182, 211112, 325998, 331311, 325188.
Natural Gas Transport	492	48621, 22121.
Pulp and Paper Mills	261	32211, 322121, 322122, 32213.
Paper Mills	262	322121, 322122.
Automobile Manufacturing	371	336111, 336112, 336712, 336211, 336992, 336322, 336312, 33633, 33634, 33635, 336399, 336212, 336213.
Pharmaceuticals	283	325411, 325412, 325413, 325414.

^a Standard Industrial Classification

^b North American Industry Classification System.

Entities potentially affected by this final action also include State, local, and tribal governments that are delegated authority to implement these regulations. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in

parts 51 and 52 of title 40 of the Code of Federal Regulations.

II. Background and Rationale for Action

On December 31, 2002, EPA published a final rule (67 FR 80186) which established CU and expanded upon provisions pertaining to PCP which were initially promulgated on July 21, 1992 (57 FR 32314). On June 24, 2005, the United States Court of Appeals for the District of Columbia

Circuit (the Court) issued an opinion vacating those portions of the 2002 and 1992 rules that pertained to CU and PCP. *New York v. EPA*, 413 F.3d 3 (D.C. Cir.), reh'g. and reh'g. en banc den. 431 F.3d 801 (2005).

This action removes from the Code of Federal Regulations (CFR) all provisions for CU and PCP containing the provisions vacated by the Court. It should be noted that nearly identical CU and PCP provisions are found in 40 CFR 52.21, 51.165, and 51.166, and that the

Court's opinion specifically addressed the CU and PCP provisions in § 52.21, but not the provisions in §§ 51.165 and 51.166. Even so, the plain language of the Court's opinion clearly applies to the parallel constructions in those latter provisions; and as a result, today's action removes those provisions as well. Because the Court vacated the language of the CU and PCP provisions as well as the legal constructs upon which they were based, the EPA is rescinding the CU and PCP provisions by way of a final rulemaking which is effective upon publication in the **Federal Register**. We are not providing an opportunity for comment.

The Administrative Procedure Act of 1946 (APA) makes provision for the procedural path we are following in this action. In general, the APA requires that general notice of proposed rulemaking shall be published in the **Federal Register**. Such notice must provide an opportunity for public participation in the rulemaking process. The APA does provide an avenue for an agency to directly issue a final rulemaking in certain specific instances. This may occur, in particular, when an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 553(b)(3)(B).

In this action, the Agency finds that notice and comment is unnecessary. This action is ministerial in nature. It simply implements the decision of the D.C. Circuit as it pertains to CU and PCP.

In addition, notice and comment would be contrary to the public interest by unnecessarily delaying the removal of the unlawful CU and PCP provisions in the CFR. Owner/operators of facilities capable of causing air pollution are subject to CAA regulations governing the manner in which they might act. Substantial costs are frequently associated with project delays or inappropriate actions. To resolve regulatory concerns up front, those who would pursue projects which might be subject to Federal restrictions rely upon the CFR to provide authoritative answers as to what requirements apply to a given proposed project.

III. Implementation

For the reasons cited above, EPA is making this action effective upon publication. See 5 U.S.C. 553(d)(3). This action removes content from the CFR that has been found to be contrary to the CAA by a Federal appeals court. This is a ministerial but necessary action on the

part of the EPA. Given the substantial costs to owner/operators of projects associated with delays and uncertainty, EPA has good cause to act in the public interest to implement the court's remedy by amending the CFR without delay.

The Court's vacatur of PCP and CU provisions meant that these provisions could no longer be used. Thus, today's rule changes are immediately effective for jurisdictions using the Federal PSD program (codified at § 52.21 for areas without an approved PSD program, for which we are the reviewing authority, or for which we have delegated our authority to issue permits to a State or local reviewing authority) and for State and local agency programs implementing part C (PSD permit program in § 51.166) or part D (nonattainment NSR permit program in § 51.165) under an approved State Implementation Plan (SIP). Permitting authorities with approved SIPs containing any or all of the 2002 CU, 2002 PCP, or 1992 PCP provisions should remove those provisions as soon as feasible, which may be in conjunction with the next available SIP revision. Furthermore, recognizing that some States also adopted our past guidance policy on PCP¹ into their approved SIPs, we believe that these portions of their SIPs should also be removed in light of the Court decision.² Because of the Court decision, these provisions are unlawful and may not be applied even prior to their removal from the SIPs.

IV. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) determined this rule is a significant regulatory action for the purpose of EO 12866 and requested that we submit the rule for OMB review. It does not meet requirements for review under Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). It also does not meet the requirements for review under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), Executive Order

13175, entitled Consultation and Coordination With Indian Tribal Governments (65 FR 67249, November 9, 2000), Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), or Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). In addition, this rule does not impose any impact on small entities and thus does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

The deletion of CU and PCP provisions from NSR and PSD requirements will reduce the associated overall reporting and recordkeeping burden estimates, but this action does not require any review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* At some point in the future, EPA will re-determine the total burden associated with the NSR and PSD rules and will adjust the estimates to reflect the effects of this action. The reporting and recordkeeping burdens associated with NSR and PSD are approved by OMB under OMB No. 2060-0003. The current public reporting burden for NSR and PSD is estimated to be 4,878,634 hours. These estimates include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit 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**. However, section 808 of that Act provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines (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 June 13, 2007. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

¹ Memorandum dated July 1, 1994. "Pollution Control Projects and New Source Review (NSR) Applicability" from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Air Directors, Regions I-X.

² In its Opinion, the Court stated on pages 8-9 that "EPA also erred in exempting from NSR certain Pollution Control Projects ('PCPs') that decrease emissions of some pollutants but cause collateral increases of others. The statute authorizes no such exception."

V. Statutory Authority

The statutory authority for this action is provided by sections 165–169, 171–173, and 301 of the Act as amended (42 U.S.C. 7475–7479, 7501–7503, and 7601). This rulemaking is also subject to section 307(d) of the Act (42 U.S.C. 7407(d)).

VI. Judicial Review

Under section 307(b)(1) of the Act, judicial review of this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by August 13, 2007. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Under section 307(b)(2) of the Act, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practices and procedures, Air pollution control, Baseline emissions, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Plantwide applicability limitations, Pollution control projects, Sulfur oxides.

40 CFR Part 52

Environmental protection, Administrative practices and procedures, Air pollution control, Baseline emissions, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Plantwide applicability limitations, Pollution control projects, Sulfur oxides.

Dated: June 5, 2007.

Stephen L. Johnson,
Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is 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.

Subpart I—[Amended]

■ 2. Section 51.165 is amended as follows:

- a. By removing and reserving paragraph (a)(1)(v)(C)(8).
- b. By removing paragraph (a)(1)(vi)(C)(3).
- c. By removing paragraph (a)(1)(vi)(E)(5).
- d. By removing and reserving paragraph (a)(1)(xxv).
- e. By removing and reserving paragraph (a)(1)(xxix).
- f. By removing and reserving paragraph (a)(2)(ii)(E).
- g. By revising paragraph (a)(2)(ii)(F).
- h. By removing paragraph (a)(2)(iv).
- i. By removing and reserving paragraphs (a)(3)(ii)(H) and (I).
- j. By revising paragraph (a)(6) introductory text.
- k. By removing and reserving paragraphs (c), (d), and (e).

§ 51.165 Permit requirements.

- (a) * * *
- (2) * * *
- (ii) * * *

(F) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (a)(2)(ii)(C) through (D) of this section as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph (a)(1)(x) of this section).

(6) Each plan shall provide that the following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (a)(1)(xviii)(B)(1) through (3) of this section for calculating projected actual emissions. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (a)(6)(i) through (v) of this section.

* * * * *

■ 3. Section 51.166 is amended as follows:

- a. By removing and reserving paragraph (a)(7)(iv)(e).
- b. By revising paragraph (a)(7)(iv)(f).
- c. By removing paragraph (a)(7)(vi).

- d. By removing and reserving paragraph (b)(2)(iii)(h).
- f. By removing paragraph (b)(3)(vi)(d).
- g. By removing and reserving paragraph (b)(31).
- h. By removing and reserving paragraph (b)(41).
- i. By revising paragraph (r)(6) introductory text.
- j. By removing and reserving paragraphs (t), (u), and (v).

§ 51.166 Prevention of significant deterioration of air quality.

- (a) * * *
- (7) * * *
- (iv) * * *

(f) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (a)(7)(iv)(c) through (d) of this section as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

* * * * *

- (r) * * *

(6) Each plan shall provide that the following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (b)(40)(ii)(a) through (c) of this section for calculating projected actual emissions. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (r)(6)(i) through (v) of this section.

* * * * *

PART 52—[AMENDED]

■ 4. The authority citation for part 52 continues to read as follows:

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

Subpart A—[Amended]

■ 5. Section 52.21 is amended as follows:

- a. By removing and reserving paragraph (a)(2)(iv)(e).
- b. By revising paragraph (a)(2)(iv)(f).

- c. By removing paragraph (a)(2)(vi).
- d. By removing and reserving paragraph (b)(2)(iii)(h).
- e. By removing paragraph (b)(3)(vi)(d).
- f. By removing and reserving paragraph (b)(32).
- g. By removing and reserving paragraph (b)(42).
- h. By revising paragraph (r)(6) introductory text.
- j. By removing and reserving paragraphs (x), (y), and (z)

§ 52.21 Prevention of significant deterioration of air quality.

- (a) * * *
- (2) * * *
- (iv) * * *

(f) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (a)(2)(iv)(c) through (d) of this section as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

* * * * *

- (r) * * *

(6) The provisions of this paragraph (r)(6) apply to projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (b)(41)(ii)(a) through (c) of this section for calculating projected actual emissions.

* * * * *

[FR Doc. E7-11289 Filed 6-12-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2006-0590; FRL-8325-8]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Request for Rescission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the rescission of the Federal

implementation plan promulgated under the Clean Air Act for the regulation of fugitive sulfur oxides emissions from a copper smelter that had operated in the State of Nevada but that is no longer in existence. This rescission was proposed in the **Federal Register** on August 28, 2006. The intended effect is to rescind unnecessary provisions from the applicable plan.

DATES: *Effective Date:* This rule is effective on July 13, 2007.

ADDRESSES: EPA has established docket number EPA-R09-OAR-2006-0590 for this action. The index to the docket is available electronically at <http://regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, EPA Region IX, (415) 947-4126, rose.julie@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to EPA.

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- II. Public Comments and EPA’s Response
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I. Proposed Action

On August 28, 2006 (71 FR 50875), EPA proposed approval and disapproval of portions of the State’s rescission request and approval of certain replacement provisions. One of the rescission requests for which we proposed approval involved a Federal implementation plan (FIP) that we promulgated in the 1970’s at 40 CFR 52.1475(c), (d), and (e) to regulate sulfur oxides from the Kennecott Copper Company smelter located in White Pine County, Nevada. As described further in our Technical Support Document (TSD) for the proposed rule, we found that the last vestige of the Kennecott Copper Company McGill facility, which was the subject of the FIP requirements in 52.1475, was removed from the area in 1993, and, therefore, the related FIP provisions are obsolete. The TSD contains more information about our proposed action. On January 3, 2007 (72 FR 11), we took final action on most of the provisions for which we had

proposed action on August 28, 2006. This is the second final action related to our August 28, 2006 proposal. We will take final action on the remaining few provisions for which we proposed action on August 28, 2006 in a third separate action.

II. Public Comments and EPA Responses

EPA’s proposed action provided a 30-day public comment period. During this period, we received no comments related to the proposed rescission of the FIP for regulation of the Kennecott Copper Company smelter in White Pine County, Nevada.

III. EPA Action

As authorized in section 110(k)(3) of the Clean Air Act, EPA is finalizing the approval of the rescission of the Federal implementation plan promulgated for the regulation of fugitive sulfur oxides emissions from the Kennecott Copper Company smelter that had operated in White Pine County, Nevada, but that is no longer in existence. EPA is codifying this action by revising 40 CFR 52.1475 to remove paragraphs (c), (d), and (e).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled “Regulatory Planning and Review.” This action will rescind a Federally promulgated rule for an air pollution emissions source that no longer exists.

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.* This action will merely rescind a Federally promulgated rule for an air pollution emissions source that no longer exists.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources;